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ABSTRACT

The major portion of this report is devoted to the Anglo and American Indian testimony from the 1973 Commission on Civil Rights Hearings on Navajo economic development, employment, education, and health care. Among the major recommendations cited are those calling for: (1) legal recognition of the Navajo Tribal Council to provide for favorable tax classification and Federal Agency grant and loan qualification; (2) a system by which the Tribal Council could make decisions with greater independence from the Bureau of Indian Affairs (BIA); (3) legislation to support program development until tribal revenues are adequate to maintain both infrastructure and development investments; (4) a program to provide superior technical expertise in planning and decision making; (5) a Department of the Interior policy providing for joint enterprises on a 50/50 (tribal and contractor) basis; (6) Federal augmentation of the Navajo Revolving Credit Fund; (7) BIA enforcement of the Navajo preference policy in Federal employment; (8) creation of a tribal agency with jurisdiction over employment discrimination complaints; (9) full Navajo representation in the educational decision making process; (10) curriculum development to include Navajo cultural awareness; (11) elimination of the Navajo teacher shortage; and (12) appropriation of funds for the Indian Health Service to make Navajo health care comparable to that of the U.S. in general. (JC)

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# The Navajo Nation: An American Colony

A Report of the United States
Commission on Civil Rights
September 1975

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U.S. COMMISSION ON CIVIL RIGHTS
Washington, D.C. 20425

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

> Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color. religion, sex, or national origin, or by reason of fraudulent practices;
>
> Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;
>
> Serve as a national clearinghouse for information in respect to denials of equal protection of the laws because of race, color, religion, sex, or national origin;
>
> Submit reports, findings, and recommendations to the President and the Congress.

Members of the Commission

Arthur S. Flemming, Chairman
Stephen Horn, Vice Chairman
Frankie M. Freeman
Robert S. Rankin
Manuel Ruiz, Jr.
Murray Saltzman

John A. Buggs, Staff Director

# THE NAVAJO NATION: AN AMERICAN COLONY

A REPORT OF THE UNITED STATES
COMMISSION ON CIVIL RIGHTS

SEPTEMBER 1975

UNITED STATES COMMISSION ON CIVIL RIGHTS

*Washington, D. C. 20425*

September 1975

## LETTER OF TRANSMITTAL

THE PRESIDENT,
THE PRESIDENT OF THE SENATE,
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

SIRS:

The U.S. Commission on Civil Rights transmits this report to you pursuant to Public Law 85-315 as amended.

"The Navajo Nation: An American Colony" describes how this country's largest Indian reservation is handicapped in its quest for economic development by a host of problems arising primarily out of its legal status, deficiencies in the Federal administrative structure, and inadequate funding of the Federal health delivery system. The report is based on the Commission's hearing in Window Rock, Arizona, capital of the Navajo Reservation, in October 1973, and on months of research preceding and following that hearing.

Some of the problems discussed will require legislative remedies, while others may be solved much more readily by administrative action. It is our hope that this report, with its findings and recommendations, will stir a prompt response. We believe this neglected segment of the American populace already has suffered too long from the burdens attendant to its deplorable status as "the poorest of America's poor."

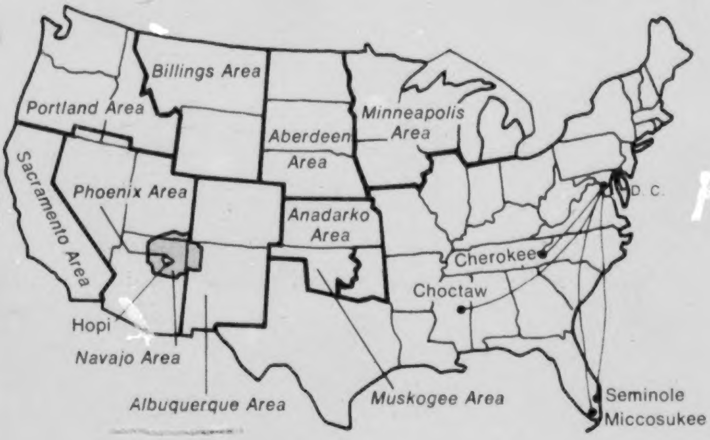
Respectfully,

Arthur S. Flemming, Chairman
Stephen Horn, Vice Chairman
Frankie M. Freeman
Robert S. Rankin
Manuel Ruiz, Jr.
Murray Saltzman

John A. Buggs, Staff Director

# NAVAJO RESERVATION

**Administrative Areas of the Bureau of Indian Affairs**


Billings Area
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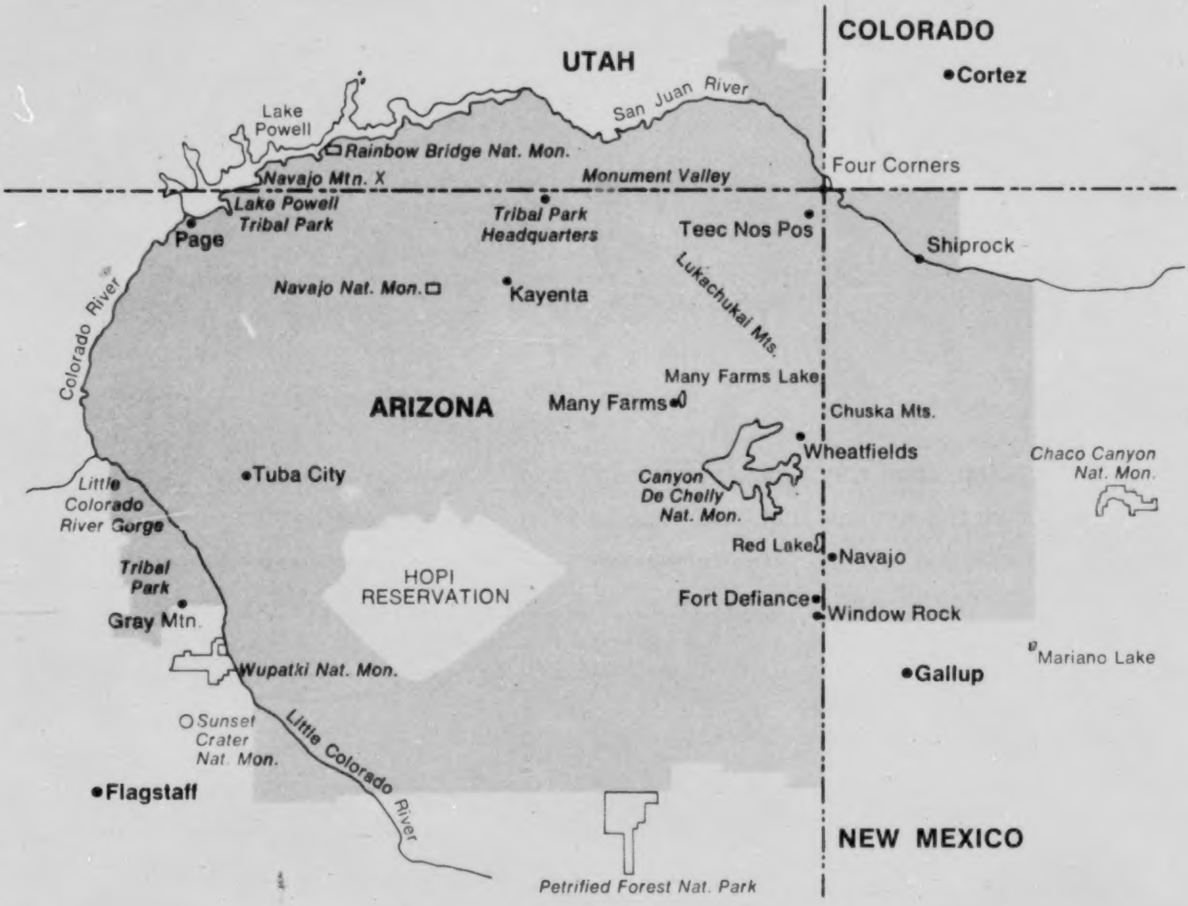
COLORADO
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Rainbow Bridge Nat. Mon.
Four Corners
Navajo Mtn. X
Monument Valley
Lake Powell Tribal Park
Tribal Park Headquarters
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Page
Shiprock
Colorado River
Navajo Nat. Mon.
Kayenta
Lukachukai Mts.
Many Farms Lake
ARIZONA
Many Farms
Chuska Mts.
Wheatfields
Chaco Canyon Nat. Mon.
Tuba City
Little Colorado River Gorge
Canyon De Chelly Nat. Mon.
Red Lake
Navajo
Tribal Park
HOPI RESERVATION
Fort Defiance
Window Rock
Gray Mtn.
Mariano Lake
Wupatki Nat. Mon.
Gallup
Sunset Crater Nat. Mon.
Little Colorado River
Flagstaff
NEW MEXICO
Petrified Forest Nat. Park

# PREFACE

In October 1973 the United States Commission on Civil Rights conducted its first hearing on an American Indian reservation. The 3-day hearing, in Window Rock, Arizona, capital of the Navajo Nation, was a followup to hearings 1 year earlier in Phoenix, Arizona, and Albuquerque, New Mexico, on the status of other reservation Indians in those two States.

The concern of the Window Rock hearing, however, was more specific. It focused on the question of self-determination for the largest Indian reservation in the United States, and it did so, in part, by concentrating on three key areas in which the current system of Indian trusteeship has failed dismally to meet the 20th century needs of some 137,000 people. Those areas of concentration were education, health, and economic development.

Approximately 80 witnesses were subpenaed to appear at the Navajo Civic Center, and others came forward voluntarily. Testimony was heard from both Indians and "Anglos," in both Navajo and English, and was translated on request by Navajo educator Dr. Samuel Billison, the official interpreter.

Some of the witnesses were accompanied by legal counsel; some were openly hostile; but many went to great effort to describe to the Commission from their own first-hand knowledge some aspect of the self-perpetuating system that has exploited the Navajo and has kept them among the poorest of America's poor. Because those witnesses described that system better than any terse summary, this report draws frequently from their own words.

This Commission requested and received comments from the tribe and relevant Federal agencies on the final draft of this report, and pertinent observations have been incorporated into the text. Among those asked to comment were the Department of the Interior (the Office of the Solicitor and the Commissioner of Indian Affairs), the U.S. Office of Education, the Indian Health Service, the Small Business Administration, and the Economic Development Administration.

# ACKNOWLEDGMENTS

This report was written by Carol J. McCabe, Legal Writer-Editor, Office of General Counsel, and Hester Lewis, Staff Attorney, Office of General Counsel.

The Navajo project was directed by Paul Alexander, Assistant General Counsel, under the supervision of Lawrence B. Glick, Acting General Counsel.

The Commission expresses its appreciation to the staff members and consultants who participated in the project, including: William Levis, Martin H. Kahn*, Deni G. Leonard*, Jerry Muskrat, Joseph Muskrat, Lynn A. Pineda, Richard Beyal, Jr.*, Leonard J. Watchman*, Mary Ann Jones*, Kerry Holman, Lorraine W. Jackson, Mary Baltimore, and Brenda Watts.

Special thanks is due Michele Macon and Lorraine W. Jackson, who typed the bulk of the report, and Frances C. Lee, Evelyn B. Avant, Treola J. Grooms, and Linda Bradley for much appreciated assistance.

Historical background in the report is drawn, as noted, from the writings of Link, Leighton, Kluckhohn, and Terrell, all of whom have authored major works on the Navajo.

*Consultants

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# 1. INTRODUCTION

> Q: Have you seen any change in the relationship between the tribe and the Bureau of Indian Affairs or the Indian Health Service...since that philosophy [of Indian self-determination] was established 3 years ago?
>
> A: [By Navajo Tribal Chairman Peter MacDonald] Yes, I have seen a change of three Commissioners of Indian Affairs--
>
> [Laughter]
>
> --and a couple of Secretaries of the Interior.
>
> --Navajo Hearing, Opening Session [1]

The above exchange between counsel for the Commission and Navajo Tribal Chairman Peter MacDonald evoked a rare moment of laughter in 3 days of testimony on the status of the Navajo Nation. The focus of the question, and of the hearing itself, was the policy of self-determination announced by President Nixon in July 1970, in a special message to Congress on Indian affairs. [2] In the context of life on America's largest Indian reservation, that policy refers to development of the tribe's human and natural resources in terms of what the Navajo people want and need in order "to live lives that are meaningful and full according to the tenets of the Navajo culture." [3] It is not a policy of termination, which would put an end to all Federal responsibility under treaties, laws, and agreements dating back to the mid-19th century. With few exceptions, as the testimony indicated, development on the Navajo Reservation both before and since enunciation of that self-determination policy has not only failed to reflect the Navajo viewpoint, but has run counter to it. And the basic stumbling block has been the Federal machinery that policy sought to modernize or at least to scale down.

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[1] Transcript of Hearing before United States Commission on Civil Rights, Window Rock, Arizona, October 22-24, 1973, p. 29 (all citations to testimony and exhibits refer to this transcript).

[2] President Richard Nixon, Message to the Congress on Indian Affairs, July 8, 1970, in Public Papers of the President at 565 (hereinafter cited as Message on Indian Affairs).

[3] Supplementary Statement of Chairman MacDonald, Exhibit No. 3.

That machinery has helped to maintain a standard of living that is among the lowest in the United States, with per capita income about one-fourth the national average and falling even further behind, an unemployment rate about 10 times the national average, an educational level of less than one-half the national median, and an infant mortality rate more than double the national average. Despite a documented abundance of development potential, the tribe exists in a welfare economy, and that economy, in the opinion of development experts,[4] has been fostered and maintained by the Federal Government in stubborn resistance to a viable and promising alternative--a realistic development effort.

## Legal Status

The Navajos, like most reservation Indians in the United States, are a unique legal entity. While they are citizens of the United States, the Navajos are not generally subject to the jurisdiction of State governments. This was made clear by the United States Supreme Court in Williams v. Lee which ruled that a non-Indian, who operated a store under Federal license on the Navajo Reservation, and sued a Navajo for debts, could not bring the action in a State court.[5] The Court based its decision on past cases which held that the States had no jurisdiction, even in criminal matters, over Indians living on reservations or non-Indians conducting business with Federal permission on reservations.[6]

---

[4] See testimony of William Miller and David Aberle, pp. 75-96.

[5] Williams v. Lee, 358 U.S. 217 (1959).

[6] Id. at 218-20.

The Court explained:

> Originally the Indian tribes were separate nations within what is now the United States. Through conquest and treaties they were induced to give up complete independence and the right to go to war in exchange for federal protection, aid, and grants of land. 7

Without commenting on the inequities of that bargain for the Indian, the Court built upon the above assumption the concept that only where Congress grants the States power over the Indians, may they exercise it, and that when Congress had wished the States to have such power, it had expressly granted it. [8]

The Court then stated that in the Treaty of 1868 the Navajo agreed to keep peace with the United States and in return for this promise the U.S. had set apart a reservation for the Navajo.

> Implicit in these treaty terms...was the understanding that the internal affairs of the Indians remained exclusively within the jurisdiction of whatever tribal government existed. Since then, Congress and the Bureau of Indian Affairs have assisted in strengthening the Navajo tribal government and its courts...Today the Navajo Courts of Indian Offenses exercise broad criminal and civil jurisdiction which covers suits by outsiders against Indian defendants. No Federal act has given the State courts jurisdiction over such controversies. 9

Noting that Congress had given the States power to assume judicial jurisdiction over the Indian tribes within their boundaries by amending their State constitutions (67 Stat. 590), the Court pointed out that absent such amendment, a State had no jurisdiction over Indians within its boundaries. [10]

---

7. Id. at 218; see also, Kent Gilbreath, Red Capitalism: An Analysis of the Navajo Economy, 32 (1973).

8. Williams v. Lee, supra at 220-21.

9. Id. at 221-22.

10. Id. at 222-23 (Note 10).

The Supreme Court reaffirmed its position as to the legal status of the Navajo Tribe 6 years later in the case of Warren Trading Post v. Arizona Tax Commission.[11]

Congress has repealed the act allowing States to assume jurisdiction over Indians by amending their constitutions, and replaced it with Title IV of the 1968 Civil Rights Act, 25 U.S.C. sec. 1321-1326, which allows States to assume civil and criminal jurisdiction over Indians only with the express consent of a majority of Indians voting in a special election.

The Supreme Court ruled that by virtue of this 1968 Act, State control of Indian judicial matters could only be assumed after approval by a majority vote of all Indians within the affected area, not by a vote of a tribal council.[12]

Thus, the legal status of the Navajo Tribe is one of partial sovereignty. The States can have judicial control over Navajos living on the reservation only if a majority of those living on that part of the reservation within the State which seeks judicial control approve. But the Federal Government, especially the Secretary of Interior and the BIA, retains control over the judicial affairs of the Navajo if the States lack consent to exercise it.[13]

## Dual Entitlement

Navajos are entitled to all the benefits and services due other American citizens from Federal and State resources by virtue of their citizenship. They are also entitled to special services and benefits by virtue of treaty obligations and special laws enacted to benefit Indians. The special "entitlement" programs include the Indian Health Service and programs operated and funded by the Bureau of Indian Affairs.

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11. 380 U.S. 685 (1965).

12. Kennerly v. The District Court of Montana, 400 U.S. 423, 428-29 (1971).

13. See 25 U.S.C. sec. 2 (1970), and Navajo Tribal Code (N.T.C.) sec. 1 (1969), as amended, incorporating 25 C.F.R. sec. 11 with approval by the Secretary of Interior as required by law.

This is what is known as the dual entitlement of reservation Indians. This dual entitlement is violated when the BIA reduces or refuses to provide services which it claims are being provided by other sources, for example a State or another Federal agency. It is also violated when a State or a Federal agency refuses to provide or diminishes a service provided to other American citizens on the grounds that the BIA is providing the service. [14]

## A Local Government

Another point of serious confusion has resulted from the Federal Government's lack of a consistent policy towards Indian tribes as equivalent units of local governments. [15] The General Revenue Sharing Act [16] formally recognized Indian tribes as units of local government. Other crucial pieces of legislation enacted by Congress have either ignored the issue altogether, implied a recognition of Indian tribes as local units of government without so stating (e.g., Manpower Revenue Sharing), [17] or have left the tribes to try their luck with State agencies (in the case of a number of formula grant programs) in the face of a rather consistent history of unsuccessful relations between Indian tribes and State governments. [18]

---

[14] For further discussion of the dual entitlement rights, see Office of Special Concerns, Department of Health, Education, and Welfare, A Study of the Impact of Decentralization Within the Department Of Health, Education, and Welfare on Services to Ethnic Minorities, p. 183 (April 1974).

[15] Ibid., p. 187.

[16] State and Local Fiscal Assistance Act of 1972, 31 U.S.C. sec. 1221, et seq. (Supp. III) (1973).

[17] Comprehensive Employment and Training Act of 1973, Pub. L. 93-203 (Dec. 28, 1973).

[18] DHEW, A Study of the Impact of Decentralization, p.187.

When the Navajo Tribe needs something which is directly available to State or county governments from a Federal agency--for example, a road building allocation from the Federal Highway Administration (FHWA)--its access to that agency is blocked if the particular enabling legislation does not include Indian tribes among the units of local government to be funded. As Chairman MacDonald told the Commission:

> I would say 90 percent of the time when we go to all the other agencies, like the Department of Agriculture and many other places, they say," Here's the law. It just says State and county. You are not a State. You are not a county. Therefore, I am sorry. We are going to be violating the law if we ever give you any money, although we sympathize with your situation. It fits into your scheme of planning, but we cannot give you any money." 19

The inconsistent Federal policy toward tribal governments not only prevents the Navajo from receiving benefits and services available to other American citizens, but also requires the payment of taxes from which other local governments are exempt. For example, as Chairman MacDonald testified:

> ...just last week, the Navajo Tribe was forced to pay $70,000 in Federal excise tax. Now, here, you know, all of us know, everybody knows, that the Navajo Tribe runs a government. There is a government here, no different from the State government or Federal government so far as it is exercising the kind of services to its people.
>
> Yet, we bought some automobiles to be used by the police for community use, and we said that we are not subject to a Federal excise tax, just as the State and the counties are not subject to Federal excise tax.
>
> This went on for about a year.

---

19. Testimony of Chairman MacDonald, p. 28.

> We finally got an opinion...[to the effect] that, "We know you are a government. Everybody knows you are a government. But according to the law of the Internal Revenue, the Federal excise tax...exemption refers only to State and county governments. It doesn't talk about Indian tribal governments. Therefore, you have to pay." 20

## Three States

This problem of an at best ill-defined legal status is further complicated by the reservation's geographic location, spreading across three State boundaries--Arizona, New Mexico, and Utah. When asked by Commissioner Rankin what was the greatest problem confronting the tribe in the field of education, Chairman MacDonald said it was the multiplicity of school systems--three State systems in addition to the schools operated by the BIA:

> It affects the employment of Indian teachers; it affects the construction of needed school buildings; it affects the establishment of a uniform curriculum that is necessary for the Indian culture, bilingual education and other education that is relevant to the needs of the Navajo people. 21

Several witnesses expressed the view that the tribe's legal status is not only a problem in special areas, such as education, but in all aspects of economic development. Development as it occurs under the tribe's current status, according to expert testimony, is no more than exploitation, with profits flowing off the reservation to the majority, non-Indian population. As BIA development expert William Miller testified, there will be no significant economic development for the Navajo Nation until the political questions surrounding the tribe's legal status are resolved.[22]

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20. Ibid., p. 29. The opinion referred to is a letter from Bernard H. Fischgrund, Chief, Excise Tax Branch, Internal Revenue Service, to the Navajo Nation, June 27, 1973.

21. Ibid., pp. 13-14.

22. See section on Economic Development, below.

## The BIA

Federal law gives the Secretary of the Interior and the Commissioner of Indian Affairs broad powers over "all Indian affairs" and "all matters arising out of Indian relations." [23] This includes veto power over all tribal contracts. [24] Under this broad authority, the Bureau of Indian Affairs has also promulgated extensive rules as to how the Indian tribes may govern themselves.

The result of all this, as President Nixon stated in his message to Congress, has been "a burgeoning Federal bureaucracy, programs which are far less effective than they ought to be, and an erosion of Indian initiative and morale." [25]

Several witnesses described in detail how Indian initiative and morale are eroded by this system. Chairman MacDonald testified, for example, that many of the tirbe's plans and proposals for development or improvement "have sat in the hands of the bureaucrats for 2 to 3 years"--as he described it, "a frustrating and backbreaking situation." [26]

> ...we are always being asked," Okay, what does the Navajo want?"
>
> Our want is very clearly and definitely spelled out by resolution or some plan of operation which the Navajo Tribal Council adopts. We forward this [to the Bureau of Indian Affairs]. Before that action is ever taken, before we can be authorized to take this action, the Bureau has to say yes or no to that particular initiative that we have started. 27

---

23. 25 U.S.C. sec. 2 (1970).

24. 25 U.S.C. sec. 81 (1970).

25. Message on Indian Affairs, p. 566.

26. Testimony of Chairman MacDonald, p. 17.

27. Ibid., p. 23.

With the exception of hospitals and health-related programs, which are operated by the Indian Health Service under the Department of Health, Education, and Welfare, all Navajo development proposals must be directed to the Bureau of Indian Affairs. Virtually every action of the tribal council must receive the approval of the BIA before it can become law or be acted upon by the tribe.[28] Frequently, Chairman MacDonald testified, "we have as many as 30 or 40 major pieces of legislation passed by the council, resolutions outstanding, not being acted on for any time up to 2 years."[29]

The process, he testified, works something like this. A resolution passed by the tribal council is sent to the BIA for approval:

> [The BIA refers it back to the tribe, saying,] "You need to rewrite this sentence here because we don't understand really what it says." So the tribe rewrites it and sends it back. [It comes back to the tribe, with the notation] four or five paragraphs down, "Rewrite this sentence again... ." [The next time, the BIA says] "By the way, did you realize that another fiscal year has passed? So why don't you do it all over again."[30]

The tribal council, for example, passed a resolution in early 1972 to set up an Office of Navajo Labor Relations to help solve some of the reservation's staggering unemployment problems. The BIA withheld approval of that office for more than a year, until September 16, 1973--after the Office of Federal Contract Compliance had approved the office's guidelines and after the BIA itself had already approved two budgets. (Approval also came, as Vice Chairman Horn noted, after the U.S. Commission on Civil Rights announced its Navajo hearing.)[31]

---

[28] See 83 IAM 6.0, Release 83-1, 10-1-57.

[29] Testimony of Chairman MacDonald, p. 23.

[30] Ibid.

[31] Window Rock Hearing Transcript, p. 281.

Such delays, the tribal chairman testified, occur all the time, and for a nation as large as the Navajo, "it can become very devastating as far as progress is concerned."[32]

The BIA is the logical agency to act as tribal advocate, since it has only one constituent--reservation Indians. However, the crucial issue concerning the BIA and the Navajo Tribe (and all Indian tribes), as one observer put it, is that "the BIA is a 19th century colonial institution which, as structured, is wholly out of step with the requirements of a new era of self-determination."[33] On January 4, 1975, Congress enacted into law the Indian Self-Determination and Education Assistance Act,[34] a major piece of legislation that will affect the Federal Government's policy framework for years to come in implementing its self-determination policies. The law is not as positively written as the tribe would have liked, as was pointed out by Chairman MacDonald in remarks before two congressional subcommittees.[35] Responsibility for promulgating regulations pursuant to the law rests with the BIA, which the tribe considers ironic in view of BIA inaction in implementing the self-determination policies outlined in the 1970

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32. Testimony of Chairman MacDonald, p. 23.

33. Letter to Paul Alexander, Assistant General Counsel, USCCR, from Jerome S. Bernstein, Consultant to the Navajo Tribe, March 24, 1975.

34. Pub. Law 93-638.

35. See Testimony of Peter MacDonald, Chairman, Navajo Nation, on Title I of S. 1017, The Indian Self-Determination Act, Before Senate Subcommittee on Indian Affairs of the Senate Interior and Insular Affairs Committee, June 1973, and Statement of Peter MacDonald, Chairman, Navajo Nation, on Title I of S. 1017, the Indian Self-Determination Act, given before the House Subcommittee on Indian Affairs of the House Interior and Insular Affairs Committee, July 1974. Chairman MacDonald recommended, for example: (1) A new office of Assistant Commissioner for Self-Determination should be created. This Office would be responsible for developing and implementing jointly with tribal officials plans for effecting self-determination; (2) Tribes must have full participation in budget and policy formulation if self-determination is to be fully realized; (3) Mechanisms for BIA accountability should be provided under the act for review of BIA decisions and to insure full two-party negotiations in contracting.

message on Indian affairs. Despite all its shortcomings, however, the BIA, in the view of the Navajo Tribe, must continue to exist for the protection of Indian rights. The problem, as Chairman MacDonald told a House Subcommittee, lies in BIA policies and operations, and not in its mere existence:

> Like it or not, the future protection of the Tribe's rightful program funds and services are inextricably tied up with the BIA, and therefore our Tribe's future in many ways is dependent upon the continuance of a "healthy" BIA. We recognize the need for the preservation of the BIA as the primary mechanism through which Indian tribes and individual Indians can obtain their entitlement which is their due through treaty rights and under law. Our issue is not whether the BIA should exist or not--we cannot survive without it--but how it functions and its ability to respond to tribal initiative.
>
> More often than not, the cry that self-determination will lead to termination because it threatens the existence of the BIA comes from elements within the BIA itself who are committed to the status quo. They holler "termination" whenever tribes advocate changing the status quo and whenever tribes attempt to exercise self-determination.
>
> This situation will not change until the BIA in Washington lays out a comprehensive plan for implementing self-determination--one which recognizes the changes which must come within the Bureau as well as within the tribes if self-determination is to become a reality, but at the same time one which provides for transition rather than upheaval. It is the absence of a clear definition and policy on self-determination and the absence of clear directives from Washington to the areas, which have resulted in chaos. 36

In short, the chairman told Congress, the tribes and the Bureau must travel the road to tribal self-determination together, and the BIA must remain a viable and relevant agency "if we are to assure that it does not ultimately lead to termination." [37]

---

36. Chairman MacDonald before House Subcommittee on Indian Affairs, July 1974, pp. 3-4.

37. Ibid., p. 5.

## History

A brief history of the Navajo might help to put the tribe's current status into proper perspective. According to Navajo mythology, the people, or *Dineh*, as the Navajo call themselves, came to this earth after escaping from four underworlds. On earth, the "Holy Ones" created four mountains known today as Sierra Blanca Peak, Mount Taylor, San Francisco Mountain, and Mount Hesperus.[38] The land between these four mountains is the area the Navajo call home.

Historians say the tribe descended from bands of hunters and gatherers and intermarried with the Pueblo Indians, adopting much from their customs and culture.[39] Apparently, the Navajo's most important adoptions from the Pueblo were agriculture and the crafts of pottery and weaving.[40]

It was from the Spanish, who first came to the Navajo territory in the 1530's, that the Navajo learned the arts of horse riding and stockraising.[41] Spanish attempts to subdue and enslave the Navajo were singularly unsuccessful. The would-be conquerors were subject to raids by the Indians, who ironically had learned to use the horse well for quick striking and mobility. So frequent and harsh were these attacks that the Spanish were forced to retreat from the Navajo area in 1680.[42] Although they later returned and enslaved many Navajo, neither the Spanish nor their Mexican successors were able to conquer them.[43]

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[38] Marvin A. Link, *Navajo: A Century of Progress 1869-1968* (Window Rock: Navajo Tribe, 1968), Introduction.

[39] D. Leighton & C. Kluckhohn, *Children of the People* (New York: Octagon Books, 1969), p. 234.

[40] John Upton Terrell, *The Navajo* (New York: Weybright & Talley, 1970), pp. 15-16; Link, *Century of Progress*, Introduction.

[41] Terrell, *The Navajo*, pp. 17-51.

[42] *Ibid.*

[43] *Ibid.*, pp. 49-77.

But "the people" were to fall victim to another culture. By virtue of its victory over Mexico in 1848, the United States acquired the land where the Navajo lived.

In 1850 a treaty between the United States and the Navajo provided that the tribe was placed under exclusive control of the United States and that the Navajo were to be subject to the same laws as all other Indian tribes under U.S. control.[44]

This treaty, however, did not insure peace between the Indians and Anglos. Anglos treated the Navajo no better than the Spanish and Mexicans had. Navajos were enslaved, raped, and even scalped by the "new" white man.[45] The period between the American takeover and the Civil War can be characterized as one of chaos and treachery, of broken promises, hostile actions, and atrocities by Anglo renegades, soldiers, and settlers on one hand, and of savage revenge by Navajo raiders on the other.[46]

Raiding of white settlers' camps to steal livestock and other settlers' possessions had made some Navajos rich; the poorer in the tribe wanted to gain by the same method. In fact, raiding was a part of Navajo life, something they had practiced against other tribes long before the white man came.[47] The Federal Government, however, was determined to protect the settlers and townspeople and their possessions.[48]

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[44] Treaty between the United States of America and the Navajo Tribe of Indians, 1850, 9 Stat. 974.

[45] Terrell, The Navajo, pp. 80-82.

[46] Ibid., pp. 79-155.

[47] Ibid., p. 80.

[48] Ibid., p. 82.

The Government's response was to attempt to rid the Navajo territory of the Navajos. A plan was conceived during the Civil War to round up these "savages" and relocate them to the east in a barren area called Bosque Redondo, in what is now eastern New Mexico. But before this was accomplished the Navajo had to be literally starved into surrender. Under the leadership of Kit Carson, thousands of U.S. troops roamed the countryside destroying everything the Navajo could use. Every field, storehouse, and hogan was burned.[49]

Terrell described the plight of the Navajo in the winter of 1863-1864:

> No one understood better than the Navajos themselves how desperate their situation was. Carson's holocaust had destroyed the greater part of their stores. There would be no opportunity to plant crops in the coming spring. Starvation rode with the soldiers against them, and it was an enemy far more formidable than the guns... . 50

Although it took 4 years before the last Navajo holdouts were forced to surrender, by autumn of 1864 more than 8,000 Navajos had been detained at Bosque Redondo, having made the trip by foot, suffering from disease and starvation. Many died en route, some shot by the soldiers. Others fell victim to slavers with the full complicity of the U.S. officials.[51]

Conditions at the 40-square-mile reservation were desperate:

> ...Navajos lived in holes in the ground sheltered only by pieces of discarded army tents, cowhides, and brush. Many were dying of malnutrition, many were almost naked, and most of them were barefoot. They were suffering from pneumonia, tuberculosis and venereal disease. 52

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49. Ibid., pp. 157-165.

50. Ibid., pp. 165-68.

51. Ibid., pp. 168-74.

52. Ibid., p. 174.

So awful is the memory of this forced march across 300 miles of rugged land that even today the Navajo bitterly refer to it as "The Long Walk." [53]

Numerous attempts were made to establish farming at the Bosque Redondo, but all failed owing to the harsh conditions of the land, droughts, and pests. [54] The relocation effort was a catastrophe for the Navajo; 2,000 died there--one-quarter of the number interned--in 4 years. Even the Federal Government could see it was a failure; and, in 1868, a new treaty was signed allowing the Navajo to return to their homeland.

The treaty with the Navajo Indians of June 1, 1868, provided for a 3.5 million-acre reservation, but this was only one-fifth of the land that the tribe had previously needed to survive. [55] Although the tribal leaders were glad to sign in order to return to their home, only part of that home was to be theirs, and this was not the worst section of the treaty.

Article V provided for a grant of land of up to 160 acres to any Indian family willing to farm it; but, generous as this provision might seem, it was modeled after an Eastern, white concept of homestead law, and it suited neither the communal tradition nor the economic realities of the arid Southwest. [56]

Still worse was the provision that every Navajo child between the ages of 6 and 16 must attend and reside at a school teaching "an English education." This provision would lead to many abuses in the future by the Federal Government. [57] Other sections of the treaty provided for supplies to be given to the Navajo by the Government, and for the punishment of those who violated the peace between the U.S. and the Navajo.

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[53] Link, Century of Progress, Introduction.

[54] Ibid., p. 1.

[55] Terrell, The Navajo, pp. 197-98; and Treaty between the United States of America and the Navajo Tribe of Indians, concluded June 1, 1868, 15 Stat. 667, Art. II.

[56] 15 Stat. 668, Art. V; and Terrell, The Navajo, p. 198.

[57] 15 Stat. 669, Art. VI; Terrell, The Navajo, pp. 199-220; and see section on Navajo Education, below.

The treaty is most important now because it set the basis for Federal control of the Navajo's destiny and placed the tribe in a position of inferiority and dependency that continues today.

So restricted was the land to which the Navajo returned in 1868 that, 10 years later, the Federal Government had to restore more land to the growing tribe, and additional lands were given back in 1880, 1883, and 1884.[58] By 1883 the impoverished Navajo had regained some economic strength. The tribe numbered 19,000 and owned 35,000 horses, 300,000 goats, and more than 1 million sheep.[59]

But Navajo farmers and herders were seen as unwelcome "intruders" by greedy railroaders, prospectors, and settlers, and the Indian often suffered violence and loss of land and livestock at the hands of lawless whites.[60]

In the early 1900's, President Theodore Roosevelt granted 4,056,000 additional acres to the Navajo in an effort to put a buffer between white settlers and Indian farmers. But many portions of this land were lost in 1911 when President William Howard Taft restored to Federal control parts of the Roosevelt grants east of the original reservation that were not already alloted to individual Navajos.[61]

Between 1917 and 1934 new grants were made totaling 1,079,000 acres, and the tribe later purchased 250,000 additional acres with money earned from mineral royalties. Today, the Navajo Reservation contains about

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58. Century of Progress, p. 11.

59. Ibid.

60. Ibid., p. 25; Terrell, The Navajo, pp. 249-50.

61. Terrell, The Navajo, pp. 250-51.

12.5 million acres,[62] but about a fifth of this is useless for farming and grazing and another 48 percent is rated only poor to fair for such uses.[63]

## Structure of the Navajo Government

Up to the time when the U.S. took over the Southwest, the Navajo had no unified political structure or single leader. The only organization was of matrilocal, matriarchal families or bands of people whose leaders, called naat' aanii ("speechmakers"), were chosen by the group or clan and removed by the same process.[64]

In fact, it was not until 1923 that the Navajo had their first formal government--the tribal council, composed of six delegates--created in part so that oil companies would have some legitimate representatives of the Navajos through whom they could lease reservation lands on which oil had been discovered. This was necessary because the Treaty of 1868 provided that no part of the Navajo Reservation could be ceded without the consent of three-fourths of the tribe.[65]

Also formed were the Navajo community chapters, made up of people in local areas throughout the reservation who meet to discuss common, local problems. In 1970, more than 100 such chapters existed.[66]

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62. Navajos also own about 147,000 acres of noncontiguous lands in New Mexico that are distinct from the main body of tribal land. Survey by BIA Office of Trust Services (June 30, 1973). See Demographic and Socio-Economic Characteristics of the Navajo, U.S. Commission on Civil Rights Staff Report, October 1973, Exhibit No. 5 (hereinafter cited as Staff Report).

63. Terrell, The Navajo, pp. 250-51.

64. Ibid., p. 279.

65. Ibid., pp. 279-80.

66. Ibid., p. 281.

The Anglo-imposed system was far from perfect, however. For one thing, the council had no real governing power over the local bands and families, and few Navajos understood what it was supposed to do, since a centralized governing body was a concept alien to their tradition.[67]

Reorganized in 1938, the Navajo government has expanded its representation and broadened its powers. The legislative powers still derive from the tribal council, but that council is now made up of 74 delegates instead of 6. Every member of the council must be over 30 and a member of the Navajo Tribe.[68] The delegates serve 4-year terms, are forbidden to hold other employment that creates a conflict of interest, and are subject to removal by a two-thirds vote of the council or by petition of 50 percent of the voters in their home precinct.[69]

The council meets four times a year, with its agenda set largely by the Advisory Committee of the Navajo Tribal Council and the BIA Area Director (again evidence of the Federal supervision of Indian affairs).[70]

The chief executive of the tribe is the chairman of the tribal council, with responsibility for "directing and supervising the personnel and executive business staff of the tribe" and over the various council committees.[71]

The tribe has its own court system and an extensive code, covering not just the structure of government, but also matters of importance to the Navajo's daily life, such as agriculture, ceremonies, commerce and trade, estates, domestic relations, elections, law and order, etc.[72]

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[67] Ibid., pp. 281-82.

[68] 2 N.T.C. §§101, 102 (1969), as amended.

[69] 2 N.T.C. §§103, 104, 105 and 11 N.T.C. §§211, 212 (1969), as amended.

[70] 2 N.T.C. §§162-63 (1969), as amended.

[71] 2 N.T.C. §§284, 903 (1969), as amended.

[72] For a more detailed description of the Navajo court system and other aspects of tribal government, see Staff Report.

All of this adds up to a quite detailed structure of self-government. It is a government structured on Anglo, not Indian concepts. It is all the more ironic, therefore, that for many important purposes, such as Federal excise tax exemptions and access to Federal highway programs, this government is not recognized by the relevant Federal authorities.

# 2. ECONOMIC DEVELOPMENT

> ...when you consider economic development...our biggest problem is the fact that we are almost starting from scratch...
> --Frank Hanagarne, Navajo Office of Program Development 73

> It is not that the Navajos are lagging behind. It is that the Navajos are being kept behind.
> --David Aberle, Professor of Anthropology, University of British Columbia 74

## A Starting Point

The quest for economic development on the Navajo Reservation begins with the staggering fact that Navajo per capita income, at about $900 per year, [75] is less than one-fourth the per capita income of the United States as a whole. [76] However, the tribe does have valuable resources.

The reservation contains about 12.5 million acres of some of the most visually magnificent landscape in America. The tribe has historic water rights to the flow from two great rivers, the Colorado and the San Juan. [77] It has valuable energy resources in oil, natural gas, coal, and uranium, as well as a lavishly productive forest. And it has a potential labor force of about 47,000 men and women. [78]

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73. Transcript, p. 58.

74. Ibid., p. 81.

75. See Figure 2, p. 44, below.

76. U.S. per capita income in 1970 was $3,921. Statistical Abstract of the United States, 1970. See Figure 2, p. 44, below.

77. See Staff Report, Appendix 7, p. 656, for a discussion of disputed Navajo water rights, a subject not included in the Window Rock hearing.

78. Department of the Interior, Bureau of Indian Affairs, Estimates of Resident Indian Population and Labor Force Status, by State and Reservation, p. 15 (March 1973).

There is also, however, a serious shortage of development tools. Transportation, skilled labor, irrigation, and investment capital are all lacking. The land itself supports only subsistence farming and grazing. An irrigation project authorized by Congress in 1962 would bring 110,000 acres into agricultural production, but this project is lagging behind its scheduled construction; and the tribe's Ten Year Plan estimated the need for about $150 million through 1982, if the project were to be completed by 1986.[79]

Only 1,370 miles of road are paved--little more than one-third the ratio of paved roads to square miles in the rural areas of the States surrounding the reservation.[80] No major rail facility has shipping depots on the reservation, and air transportation is limited to small charter services.[81]

Although there is a surplus of labor, there is also a shortage of people with critical skills. Technicians and management personnel are extremely scarce.

Investment capital, the single greatest development factor, is also the most elusive. Tribal land held in trust by the United States may not be used as collateral for loans.[82]

## Exploitation: The Experts' View

The reservation's mineral resources are its prime attraction for outside investors. For the tribe, the immediate questions are how much

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79. The Navajo Tribe, The Navajo Ten Year Plan (June 1972), Exhibit No. 4, pp. 525-26.

80. Ibid., p. 521. Road construction and maintenance needed to provide a transportation infrastructure for the Navajo equivalent to that in surrounding rural areas would cost a total of $730 million over a 10-year period. Ibid.

81. Needed airport facilities on the reservation would cost an estimated $10 million, bringing the needed road and transportation total to $740 million, employing an average of 1,400 workmen a year in construction, maintenance, and administration over a 10-year period. Ibid.

82. 25 U.S.C. §177 (1970).

exploitation to allow and how to get maximum long term benefit from the depletion of its major assets. As stated by one witness, economic development for the reservation "is not simply a question of how the reservation can most profitably be milked by outside interests... ."[83]

Two development specialists, William P. Miller, intergovernmental relations officer for economics, BIA, and David Aberle, professor of anthropology, University of British Columbia, agreed that the status of the reservation today is very much like that of an underdeveloped nation in the grip of a colonial system. As Mr. Miller expressed it, the problem is not one of technology but of political power:

> And I think until the political issue surrounding the status of the Navajo Nation as a legal, legitimate government entity within...the overall sovereign power of the United States...unless those questions of jurisdiction and power, political power, are settled, in my judgment, ...I see little that can be done in terms of economic development, mainly because, historically, a people do not really develop until they control the decisionmaking authority of their government, until they control the means of creating the infrastructure which is necessary for the development of an economic base. 84

Dr. Aberle, who like Mr. Miller has studied the obstacles to Navajo economic development,[85] told the Commission he believes the problem is also one of conflicting economic interests:

> Power is not merely politics, and I think that underlying the problem of power is the problem of economic interests, that oil companies do not like to share profits with the Navajo Tribe, that whenever there is a choice between a settlement that could be made on the reservation and could be made in Farmington, Gallup, Flagstaff, or Winslow, the choice will be made in favor of the border communities, and that, in other words,

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83. Testimony of Dr. David Aberle, p. 79.

84. Testimony of William P. Miller, pp. 80-81.

85. See D. Aberle, A Plan for Navajo Economic Development, in Toward Economic Development for Native American Communities, Subcommittee on Economy in Government of the Joint Economic Comm., 91st Cong., 1st Sess. at 223-76 (1969), Exhibit No. 9, p. 718.

> whenever it is a question of Navajo interests and other interests, the choice goes in favor of other interests. 86

Dr. Aberle cited several indicators of the reservation's neocolonial status: the fact that whatever development is allowed must be noncompetitive with outside interests or done by those interests, the absence of taxing power, and the characteristic draining off of profits.[87] (See figure 1.)

Nearly all of the investment funds that go into the reservation also flow out of it, simply because, as Mr. Miller testified, the tribe does not control the institutions for development--financial insitutions, trade and commerce, and the like.[88] The capital that could be generated on the reservation is instead drained off, and as Dr. Aberle put it, "drained off in 100 ways."

> It is not that the Navajos are lagging behind. It is that the Navajos are being kept behind. And the devices are multiple.
>
> In the first place, it is outside interests who manage to pay royalties and still make a profit--and a handsome profit, to judge by the dividends of oil companies and coal companies. None of those profits remain here. There is the drainoff that results from the lack of opportunity to tax and there is the drainoff that results from 100 ways of providing hidden and overt subsidies to business firms that operate on the reservation, but no sufficient direct subsidy to the tribe to provide oil depletion allowance and training programs... . 89

Dr. Aberle noted that, if the dolar value of those benefits reaped by outside private enterprise on the reservation were applied instead to

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86. Testimony of Dr. David Aberle, p. 82.

87. *Ibid.*, p. 81

88. Testimony of William Miller, p. 81.

89. Testimony of Dr. David Aberle, pp. 81-82.

the reservation itself, "it would be called either relief or socialism," but as applied to the outside corporations, it is money considered to be "supportive of free private enterprise."[90]

Revenues received by the tribe from oil leases and royalties are largely absorbed by administrative costs--the day-to-day expenses of running a government--and by basic welfare needs on the reservation. Less than 4 percent of the tribe's own revenue of $16.9 million is available as investment capital.[91]

Mr. Miller, who was assigned by the BIA at Chairman MacDonald's request to work with the tribe in identifying some of the obstacles to economic development, agreed with Dr. Aberle that the Federal Government should subsidize administrative and welfare costs and allow the tribe to use its own revenue for investment capital.[92] As Dr. Aberle expressed it, there is an "urgent need" for capitalization by the Federal Government to work the tribe out of the "vise" in which it now exists.[93] The elements of that "vise" were summed up this way: If the tribe foregoes opportunities for mineral exploitation, it foregoes the chance for immediate income. Yet, it must have this income to operate that which, because of the reservation's general underdevelopment coupled with other historical factors, is a welfare economy.[94] Exploitation of those resources, however, is a short term answer because of the depletion factor. The reservation's mineral resources are given a predicted maximum depletion span of 35 years.[95] The pertinent questions are what kind of life and what kind of land will be left after these resources have been exploited.

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90. Ibid.

91. Testimony of William P. Miller, p. 83.

92. Ibid., pp. 83-84.

93. Testimony of Dr. David Aberle, p. 79.

94. Ibid.

95. Ibid., p. 88.

Mr. Miller had tried to identify by function and objective all Federal Government assistance programs to the reservation. He testified that the data were not available from any of three likely sources: the BIA, the Federal Office of Management and Budget, or the Western Regional Council, which is responsible for overall coordination of program assistance to the Navajo and all other Indian reservations in Arizona, California, and Nevada.[96] Mr. Miller said he could comment in general terms, however, on how that money--a gross figure of approximately $200 million annually[97]--is spent:

> ...Federal government assistance to the Navajo over the last 100 years [runs] into billions of dollars, [but] very, very little has gone specifically for the development of the Navajo economy...
>
> ...[T]here has been no significant effort in the history of Federal Indian affairs policy to systematically plan and provide the necessary capitalization for both resource and human development meshed with the tribe's own resources. 98

As one example, Mr. Miller cited BIA funding assistance to the tribe for commerce and trade--approximately $115,000 that is "absorbed primarily by staff people, travel, and fringe benefits."[99]

In summary, the expert testimony of these two witnesses leads to one conclusion: that the Federal government, faced with several alternatives, has consistently opted for the one of least benefit to the Navajo people and their land and the one most likely to perpetuate a welfare existence on the reservation. The choice, as Dr. Aberle summed it up, is the "difference between running a relief economy and

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96. Testimony of William P. Miller, pp. 82-83.

97. Ibid., p. 83.

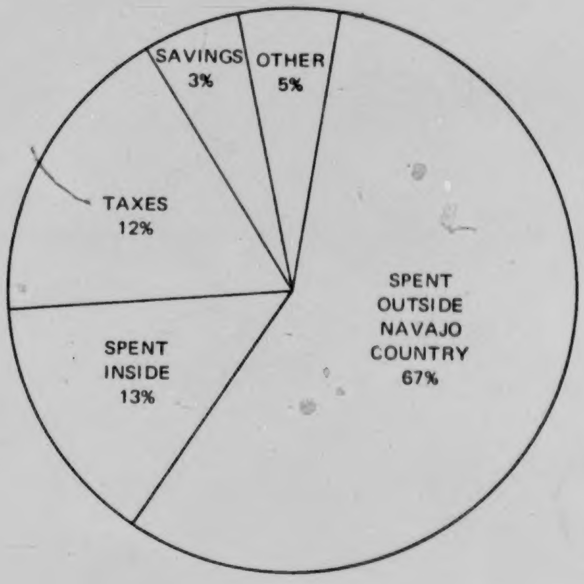
98. Ibid., p. 83.

99. Ibid., p. 83.

running a development economy."[100] And for 100 years, the Federal Government, as the hearing went on to discuss, has hampered and even blocked Navajo development.

Figure 1

THE MISSING MULTIPLIER: THE DOLLAR MADE ON THE RESERVATION IS SPENT ELSEWHERE



SOURCE: Navajo Community College

Reprinted from the Navajo Ten Year Plan, Exhibit No. 4, p. 511.

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[100] Testimony of Dr. David Aberle, p. 89.

## Exploitation: A Community View

One of the major problems facing the tribe at both the council and community levels is the lack of expertise to evaluate proposals presented by outside interests. A panel of community leaders testified at the hearing about the difficulty of determining what is actually being proposed and what costs and benefits it will mean for the Navajo.

Navajo Community College Instructor Harris Arthur, a member of the Burnham Chapter on the eastern part of the reservation, testified that he became suspicious of some of the statements made by a representative of El Paso Natural Gas at a chapter meeting in August 1972.[101] The company was seeking local support for its proposal to build three coal gasification plants in the Burnham Chapter area. It was his understanding, Mr. Arthur testified, that El Paso and WESCO, a company seeking to build four other gasification plants on the reservation, planned to consume all coal deposits in the area within 25 years.[102]

Mr. Arthur testified that, because he considered some of the statements made by the El Paso representative at that chapter meeting to be "false and misleading," he decided to do some investigating on his own.

> ...specifically, there were statements made and promises made that led the people to believe that 900 Navajos would be working there, while, in fact, 900 Navajos weren't going to be working there, but in each of these plants I think they estimated 900 employees...but it was presented in such a tone that 900 Navajos would be employed... . 103

Mr. Arthur said false statements were also made about a water system:

> I remember specifically the statement that the water had been obtained from the San Juan River and that this water would then be brought down to be used in the plant, and...would also be available for the local Navajos to use on the farms and in their homes, which was entirely false.

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101. Testimony of Harris Arthur, pp. 37-38.

102. Ibid., p. 37.

103. Ibid., p. 38.

> The fact was that El Paso did not have the water; they still do not to this day, and it was earmarked for the plant and no outside use. It was not earmarked for noncommercial use such as in homes or the farm... . 104

On May 5, 1973, almost a year later, when El Paso returned to the Burnham Chapter with a formal request for approval of the project, the chapter members voted it down. A similar proposal by WESCO was later rejected as well.[105]

Mr. Arthur testified that, in rejecting the proposals, the chapter specified that it wanted "clarifications on some of the issues and problems concerning this type of development that would affect the Burnham people, or the Navajo people."[106] Since then, he told the Commission, no one had returned to the chapter to negotiate these issues.[107]

Mr. Arthur said that the tribal council could still approve the gasification plant proposals without chapter consent, but that "in the atmosphere of tribal politics...the tribal government is more responsive to political pressures at the local level"[108] than is required under the tribal code. He added, however, that with the worsening of the country's energy problems the companies had been applying considerable pressure on the tribe to develop its energy resources.[109] He testified that, at one chapter meeting, "we were told by representatives of the tribal government that it was not the decision of the Navajo Tribal

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104. Ibid.

105. Ibid., pp. 38-39.

106. Ibid., p. 43.

107. Ibid., p. 48.

108. Ibid., p. 49. Members of the tribe are currently suing Peabody Coal and the Navajo Tribe for damages incurred through the coal company's strip mining under a tribal lease on lands traditionally occupied and used by the plaintiffs. Lake v. Peabody Coal, No. 72-209-PCT-WPC (D. Ariz., filed Apr. 28, 1972).

109. Testimony of Harris Arthur, p. 47.

Council to decide these issues, that Washington had the say-so, that he [the Secretary of the Interior] had the big stick."[110]

A member of the tribal council, Carl Todacheene, chairman of the resources committee, testified that the tribe had been actively trying to develop its own resources. He cited as two successful examples the Navajo Forest Products Industries and the Navajo Tribal Utility Authority—both 100 percent Navajo owned. Two other efforts, a Navajo Agricultural Products Board and the Navajo Housing Development Enterprise were also "on their way."[111]

In "more competitive fields, such as the oil and gas business, the tribe has been "hampered."[112] Mr. Todacheene recalled that in the mid-1950's the tribe approached the Delhi-Taylor Oil Corporation with a 50-50 partnership proposal for the development of oil and gas resources. He blamed the proposal's eventual defeat on intensive lobbying at the Department of the Interior by industry competitors.[113]

The tribe, Mr. Todacheene testified, is trying again, this time to develop its uranium fields along partnership lines:

> I think we are at the point where we have gotten to at least five major companies on the same type of thinking, so-called joint venture, going on a 50-50 basis whereby we will get the bigger share of the profit, bigger share for the employment, and more proper utilization of our resources...
>
> If we could only go that route we probably could put the land back in better condition, provide better employment for our people, more training ...because...where we just go on a lease basis and get royalty, all the things that we expect, that we put into some of our leases [are] not forthcoming. 114

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110. Ibid., p. 47.

111. Testimony of Carl Todacheene, pp. 40-41.

112. Ibid., p. 41.

113. Ibid.

114. Ibid., pp. 41-42.

Mr. Todacheene expressed the fear, however, that there will again be "a terrific amount of lobbying" at the Department of the Interior level "to discourage this kind of thing." [115]

This problem of Navajo rights and interests competing and in conflict with outside economic interests--a conflict that Dr. Aberle concluded is always won by the outside interests--was also discussed by Chairman MacDonald, who cited as one example the strip mining already being done on the reservation:

> I think the conflict [between Navajo and Anglo ideas on development] is really brought about simply because some of the wishes of the Navajos are not brought into the picture of the developments.
>
> For instance, you take the strip mining which has been one of the controversial things here. Well, we, the Navajos, did not have an opportunity to even discuss the pros and cons of strip mining when it was put to us, that we leased the coal to the companies and that they were going to mine it, surface mining or strip mining. The question did not come about. They mine it as they wish. 116

The questions of land reclamation, water rights, adequate royalties or profit sharing, the amount of employment and the degree of managerial training for Navajos--all are issues on which the tribe is in serious and urgent need of both technical and legal advice from trustworthy sources. On none of these issues, as the testimony repeatedly asserted, has the Federal Government, as trustee of the tribal lands, provided that necessary expertise. [117] On all accounts, either by negligence

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115. Ibid., p. 42.

116. Testimony of Chairman MacDonald, p. 27. Nor has the tribe been warned in the past of serious health hazards inherent in certain mining operations, as documented in Spake, Navajo Miners and Lung Cancer, The Washington Post, June 9, 1974 (Outlook) p. 1.

117. Herbert Becker, special assistant to the Associate Solicitor, Division of Indian Affairs, DOI, comments: "A generalization such as this is impossible to comment on given the vagueness of the allegation. I can say, though, that our Division recognizes its high

(continued)

or deliberate bias, the Government's weight has been on the wrong side of the bargaining table.

## Investment Capital: A Barrier

The availability of investment capital is as vital to economic development on the Navajo Reservation as it is in any developing nation. According to 1972 tribal figures, accumulated capital reserves derived from oil revenues total about $50 million.[118] Very little of this fund is available for investment in economic development. Most of it is needed to maintain essential services and its use must be geared toward the time when oil depletion results in reduced tribal income.[119]

The difficulty that Indians have in obtaining credit for businesses has been noted in practically every study on Indian economic development[120] and was further documented in the Window Rock hearing. The special institutions that do exist--the Small Business Administration, the Economic Development Agency of the Commerce Department, and the Navajo

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(N. 117 continued)

responsibility and adheres to the most exacting standards in enforcing the trust responsibility, which includes instituting legal actions on behalf of tribes to protect their resources. Because of this responsibility, we have established a Field Office in Window Rock, Arizona, made up of two lawyers who are in continual contact with the Navajo Tribe. It should also be recognized that in many instances, which are beyond our control, administrative decisions are made within the Department which result in the Indian position being discarded in favor of the interests of another group/client in the Department which the Administration feels has a paramount interest." Letter from Mr. Becker to John A. Buggs, Staff Director, USCCR. (The Field Office was established in 1974.)

[118] Navajo Ten Year Plan, Hearing Exhibit No. 4, p. 509.

[119] See Table 2, Public Investment and Resulting Employment.

[120] See, e.g., K. Gilbreath, Red Capitalism, An Analysis of the Navajo Economy (1973).

Revolving Credit Fund, for example--have only a fraction of the capital needed and are not structured to render the required services.[121]

## Navajo Revolving Credit Fund

The Navajo Revolving Credit Fund (NRCF) was established in the late 1940's with tribal funds and an initial loan of $700,000 from the BIA's Revolving Credit Fund.[122] As of June 30, 1974, the BIA participation had been reduced to $180,000 and the tribe's investment had grown to nearly $2 1/2 million. Retained earnings in the program amounted to $513,348, making a total investment of more than $3 million.[123]

The objective of the program is to make loans to Navajos for economic development purposes, or as Everett E. Wood, the BIA Navajo area credit officer, described it, to make "major rehabilitative type loans:"[124]

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121. On April 12, 1974, the Indian Financing Act was enacted into law. P.L. 93-262, 88 Stat. 77. The act has five parts: the Indian Revolving Loan Fund, Loan Guaranty and Insurance, Interest Subsidies, Indian Business Grants, and Management and Technical Assistance. The Department regulations on the Indian Business Development Program (25 C.F.R. Part 80 (1974)), promulgated December 23, 1974, restrict eligibility to profit-oriented enterprises, a problem noted below in the discussion of Small Business Administration programs. The grants (up to $50,000) are also limited to applicants able to obtain at least 60 percent of their funding from other sources. 25 C.F.R. §80.17(b). Part 1, Loans to Indians from the Revolving Loan Fund, like Part 80, above, includes a provision intended to insure that competent management and technical assistance is available to the grantee. 25 C.F.R. §91.7 (1975). See also, 25 C.F.R. Part 93 (1975), the regulations governing the Loan Guaranty, Insurance, and Interest Subsidy, which were published March 19, 1975. While this act and the regulations pursuant to it represent a step forward in Indian development assistance, it is still too early to predict their impact on the particular problems faced by the Navajo.

122. Testimony of Everett E. Wood, p. 104.

123. Telephone interview with Everett E. Wood, April 16, 1975.

124. Testimony of Everett E. Wood, p. 104.

> We are not in the small loan, quickie loan business. We leave that up to the peripheral loan companies and banks. Our objective is to get people, members of the Navajo Tribe, on their feet economically and to provide financing where they cannot get their credit elsewhere on reasonable terms and conditions. 125

Many of the NRCF loans are for home improvement, home construction, or home purchase.[126] Others are for business development.

Mr. Wood testified that interest rates are generally kept 2 to 3 percent below prevailing rates in the area, and that at the time of the hearing the NRCF rates were 6 to 7 percent, compared with going rates of 10 to 12 percent for similar loans.[127] At the end of fiscal year 1974, outstanding loans included: 460 to individuals (including partnerships and private Navajo corporations), amounting to $2,302,034; two loans to tribal enterprises, the Navajo Arts and Crafts Guild and the Navajo Housing Development Enterprise, totaling $42,042; and two loans to co-ops, $35,571.[128]

Although almost all of the money in the fund is tribal money, under a 1961 agreement between the tribe and the Commissioner of Indian Affairs, the fund is administered by a BIA employee, rather than by a member of the tribe.[129] The credit committee of the tribe (composed of five council members) has authority to approve housing loans up to $10,000 and other loans up to $5,000, except loans to government employees and loans for education. All other loans must have the approval of the BIA Area Director.[130]

The major problem with the tribal credit program, however, is that it simply lacks sufficient funds to support significant small business development.

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125. Ibid., pp. 104-105.

126. Ibid., p. 105.

127. Ibid.

128. Telephone interview with Everett E. Wood, April 16, 1975.

129. See, Exhibit No. 12, p. 785-89.

130. Testimony of Everett E. Wood, p. 106.

Small Business Administration

The Small Business Administration's loan programs are also ill suited to serve the Navajo Nation or Southwest Indian communities in general.

Stanley Goldberg, SBA District Director for the State of Arizona, repeated for the Commission an evaluation he had made 3 months earlier in a letter to SBA headquarters in Washington:[131]

> I stated that after 4 years of study of the Indian economic situation, as it relates to the SBA program, it is my conclusion that their problems are separate and distinct from that of any minority group. SBA regulations and policies are not adapted to serving Indian applicants because of the unique history and development of the Indian people.
>
> When the minority enterprise program became a part of the SBA, I am sure that the Indian was not considered in that light. It was mainly directed to the blacks, the Mexican Americans, the Asiatics, the Orientals. And solely because the people who administer the program from Washington are not acquainted with the habits, the cultural background of the Indians...the program they devised, in my opinion, excluded aid to the Indians, per se. 132

Only 35 loans, totaling $460,800, were made by SBA to Indians on the Navajo Reservation during the 3 fiscal years ending on June 30, 1973.[133]

One SBA program that has completely failed the tribe is the community development program, which is geared to help small communities help themselves. In order to participate in the program, the community has to form a local development company (LDC), consisting of 12 members, with a State charter. For every dollar the LDC raises, the SBA will

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131. Letter from Stanley Goldberg, SBA District Director, to Louis Laun, Associate Administrator for Operations, SBA, Washington, D.C., July 24, 1973.

132. Testimony of Stanley Goldberg, p. 107.

133. Data supplied by Richard J. Sadowski, Director, Reports Management Division, SBA, Washington, D.C., November 30, 1973 (in USCCR files).

lend nine at an interest rate of 6 3/4 percent.[134] The maximum loan for any one project is $350,000,[135] and it can only be used for land, buildings, and long term, depreciable equipment.[136]

So far, the tribe has been unable to form an LDC on terms acceptable to the SBA. According to SBA economic development specialist Roy Snell, who administers the community development program in Arizona, the biggest obstacle is the SBA requirement that the LDC project must be a profit-oriented business.[137] The Navajo Tribe wants to form cooperatives in nonprofit organizations.

A group of Navajos did form one LDC and submitted a $350,000 loan application for a commercial laundry facility in Tuba City, in the western part of the reservation. In response to this proposal, the SBA wanted a guarantee from the BIA that this business would get a BIA contract for 3 years. The BIA refused to give such a guarantee and the SBA then refused the loan. SBA Area Director Stanley Goldberg told the Commission:

> ...we wanted a 3-year guarantee, and [the BIA] wanted to give us a 1-year guarantee, which meant nothing. We were even stretching it for 3-years because it usually should be for a much longer period of time. We were doing everything we could to try to put this into the operation. We had very little cooperation. 138

The BIA cites three reasons for not agreeing to a 3-year contract with the proposed Navajo laundry:

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134. Letter from Connie Mack Higgins, Associate Administrator for Minority Small Business, SBA, to John A. Buggs, Staff Director, USCCR, Mar. 6, 1975. At the time of the Window Rock Hearing, the interest rate was 5 1/2 percent.

135. Testimony of Roy Snell, p. 108. As a conduit for the loan funds, the LDC itself need not be a profitmaking enterprise (13 C.F.R. §108.2(d) (1974)), but the business for which it seeks the loan must be (13 C.F.R. §121.3-2(i) (1974).

136. 13 C.F.R. §108.502-1(d) (1974).

137. 13 C.F.R. §108.502 (1974); See also §108.502-1(b) (1974).

138. Testimony of Stanley Goldberg, p. 109.

> (1) The Bureau of Indian Affairs operates on annual appropriations and therefore cannot commit itself beyond the period of the currently appropriated funds;
>
> (2) Since our laundry business presently and for the past several years is, and has been, exclusively with Indian firms, we could offer to any newcomer to the field only what we offer the existing firms--the right to compete among Indian firms. This is in accordance with BIAM 5.14A.(2) "When the products of Indian industry to be contracted for are available from more than one Indian contractor, competitive negotiations are conducted with each Indian contractor within the normal competing area."
>
> I'm sure you would agree that even without the above stipulation, no useful purpose would be served by committing our future business to a new or proposed Indian firm at the cost of the destruction of existing Indian businesses. 139 (Emphasis added.)

BIA laundry from Tuba City is currently sent to an Indian firm in Cortez, Colorado, some 200 miles away; all other BIA laundry on the reservation, amounting to an estimated $500,000 in business annually, is handled by only four Indian firms.[140] The BIA offered no figures to substantiate its contention that a 3-year contract with a new firm would serve to destroy an existing Indian business while a 1-year contract apparently would not.[141]

No other Navajo LDC project has been proposed. Participation by other tribes in the LDC program is also minimal, yet the SBA does not solicit tribal participation.

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139. Letter from Thomas G. Brandt, BIA, Navajo Area Office, Area Property and Supply Officer, Contracting Officer to USCCR, Jan. 29, 1974. Exhibit No. 23.

140. Telephone interview with Walter Dzick, BIA, Navajo Area Office, Supervisory Procurement Agent, Oct. 8, 1974. The other three laundries are in Gallup and Crownpoint, New Mexico, and Salt Lake City, Utah.

141. The BIA has consistently demonstrated its unwillingness to use the Buy Indian contracting authority as a developmental tool. See USCCR, Minorities and Women as Government Contractors (1975).

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Mr. Goldberg testified that he believed one way in which SBA could be made more responsive to Indian needs would be to establish an Indian desk within SBA, a suggestion which he said had "not fallen on deaf ears in Washington." [142]

Commenting recently on the problems described above, an SBA official wrote the Commission:

> The Indian thrust has been centralized in the Office of the Associate Administrator for Minority Small Business. This office has had planned meetings with the Office of Tribal Resource Development and my expectation is that, as a result of these meetings, a superior coordinated program between SBA and BIA will ensue.
>
> * * * * *
>
> The LDC program for Indians has been a disappointment to us. The laundry case is evidence that a more satisfactory relationship needs to be established, one of the goals of the interagency meetings mentioned above. [143]

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[142] Testimony of Stanley Goldberg, p. 107. One portion of Mr. Goldberg's testimony revealed an arguably counterproductive viewpoint for a government official in the Southwest. Mr. Goldberg testified that the SBA had formerly employed a Navajo on the reservation to handle the minority enterprise program. The Navajo employee resigned, according to Mr. Goldberg, because "a Navajo cannot effectively operate with Hopis and other kinds and vice versa." Mr. Goldberg had also concluded that "a Mexican American cannot deal effectively with the Indians, nor can a woman." (Testimony, p. 111.) Mr. Goldberg's contention that the "only solution" was to employ " an experienced, qualified, and trusted Caucasian" male to work with the Navajos was challenged by Commissioners Freeman and Ruiz. To Commissioner Ruiz, a Mexican American, Mr. Goldberg hastily added: "It is not the Mexican Americans who cannot work with the Indians. It is the Indians who seem not able to work with the Mexican American representative. We have them [Mexican Americans] in our office...They are dedicated." (Testimony, p. 112.) No other testimony indicated that the Navajos, whose tribal culture recognizes female as well as male leadership, cannot work effectively with Indian or non-Indian men or women.

[143] Letter from Connie Mack Higgins, Associate Administrator for Minority Small Business, SBA, to John A. Buggs, Staff Director, USCCR, Mar. 6, 1975.

## Economic Development Administration

The Economic Development Administration of the Department of Commerce focuses on improving the economic potential of areas in which there is substantial and persistent unemployment or underemployment. By improving the area's infrastructure (e.g., modernizing public works), the program helps to attract additional economic activity.

The EDA selects the projects it will fund on the Navajo Reservation from a list of priorities developed by the tribe. The EDA grant program has spent approximately $24 million on the reservation in about 35 projects [144] since fiscal year 1966, including more than $11 million for water and sewer projects. In fiscal year 1973, EDA projects ranged from more than $1 million in public works for the 76 acre industrial park at Church Rock, New Mexico, to $2,500 for a feasibility study of recreation development.

EDA's future was uncertain at the time of the Window Rock hearing, but its enabling legislation has since been extended with certain modifications. Further study is warranted into possible application of other EDA programs to Navajo needs.

## Private Lenders

In discussing the problem of capital availability, Navajo Small Business Development Corporation (NSBDC) [145] Director Joseph R. Hardy testified that investigations and inquiries had been made into the possibility of private outside financing. The results forced the conclusion that, until the Navajo entrepreneurs can create or receive equity financing (e.g., by putting up real estate as security), they will not qualify for debt financing through local institutions. On numerous occasions, Mr. Hardy recalled, direct appeals were made to

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144. Testimony of Paul Luke, Economic Development Representative, Economic Development Administration, Phoenix, Arizona, p. 63.

145. The Navajo Small Business Development Corporation is funded by a September 1972 grant from the Office of Minority Business Enterprise, Department of Commerce. Mr. Hardy, a Navajo, has headed the program since its inception.

local and statewide banks in Arizona and New Mexico on behalf of NSBDC clients:

> Each time, financing is denied because these institutions will not recognize real or personal property on the reservation as collateral for loans. In one particular case a client had a net worth conservatively valued at $87,000 but was denied a $4,000 loan.
>
> In many cases, the clients simply do not have the required 10 to 15 or 20 percent equity investment with which to apply for debt financing. 146

Consequently, Mr. Hardy testified, NSBDC's efforts have been directed towards acquiring the much needed seed capital or "front money." Applications for assistance have been submitted to a number of foundations and philanthropic organizations.[147] At the same time, the NSBDC is giving technical and managerial assistance to entrepreneurs who have been able to get their businesses underway; the office is also working toward development of large scale, comprehensive, management training programs at the Navajo Community College to overcome another obstacle to development—the great lack of business management skills.[148]

## Land and Business Site Leases: Another Barrier

The procedure for obtaining land for business sites is another of the principal obstacles to business development on the reservation.

Reservation land may not be sold.[149] In order to acquire a business site, the individual Navajo must submit an application to the tribal

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146. Statement by Joseph R. Hardy, Exhibit No. 11, p. 783.

147. *Ibid.*, p. 784.

148. *Ibid.*, p. 783.

149. Tribal land, within the boundaries of a reservation, which is held in trust by the United States for the tribe (the tribe has beneficial ownership of the land, whereas the U.S. has legal title) may not be sold without an authorizing act of Congress. 25 U.S.C. §177 (1970).

government and also to the appropriate BIA area agency.[150] In all, the application involves some 20 steps, which may take 5 years or more to complete. Those that are not very complicated might be approved within 1 year, but others can be held up indefinitely in the bureaucratic process awaiting further information.[151] As Mr. Hardy observed, "The result of this time-consuming system is the dissuasion of new business starts."[152]

Given the scarcity of Navajo investment capital and the red tape involved in site leasing, it is no surprise that of 196 business establishments on the reservation, only about 69 are Navajo owned, and about 56 of these are gas stations or other low capital, service establishments.[153]

## The Unmet Need

The following indicators, reprinted from the *Navajo Ten Year Plan*, show how much must be done to give the Navajo people an even break in education, health and necessities of life, and in the opportunity to make their own way in the economic world. As the tribe notes in the plan, better indicators could be devised if facts were available, but the indicators set out here give a clear picture of the development gap.

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150. Approval is needed from the local chapter in which the site is located because most land, while not "owned" by individual Navajos, is already held through inherited use-right by Navajo families to whom the request for transfer of the use-right must be made. The request is next submitted to the tribal council and finally to the BIA Real Property Management Branch for the drawing of the lease. After acquiring the lease, the would-be entrepreneur must also secure a trader's license from the tribe and file a performance bond guaranteeing payment of rent on the lease. *See* K. Gilbreath, *Red Capitalism: An Analysis of the Navajo Economy*, pp. 40-49 (1973); *see also Staff Report*, pp. 606-09; and testimony of Joseph Hardy, Exhibit No. 11, p. 780.

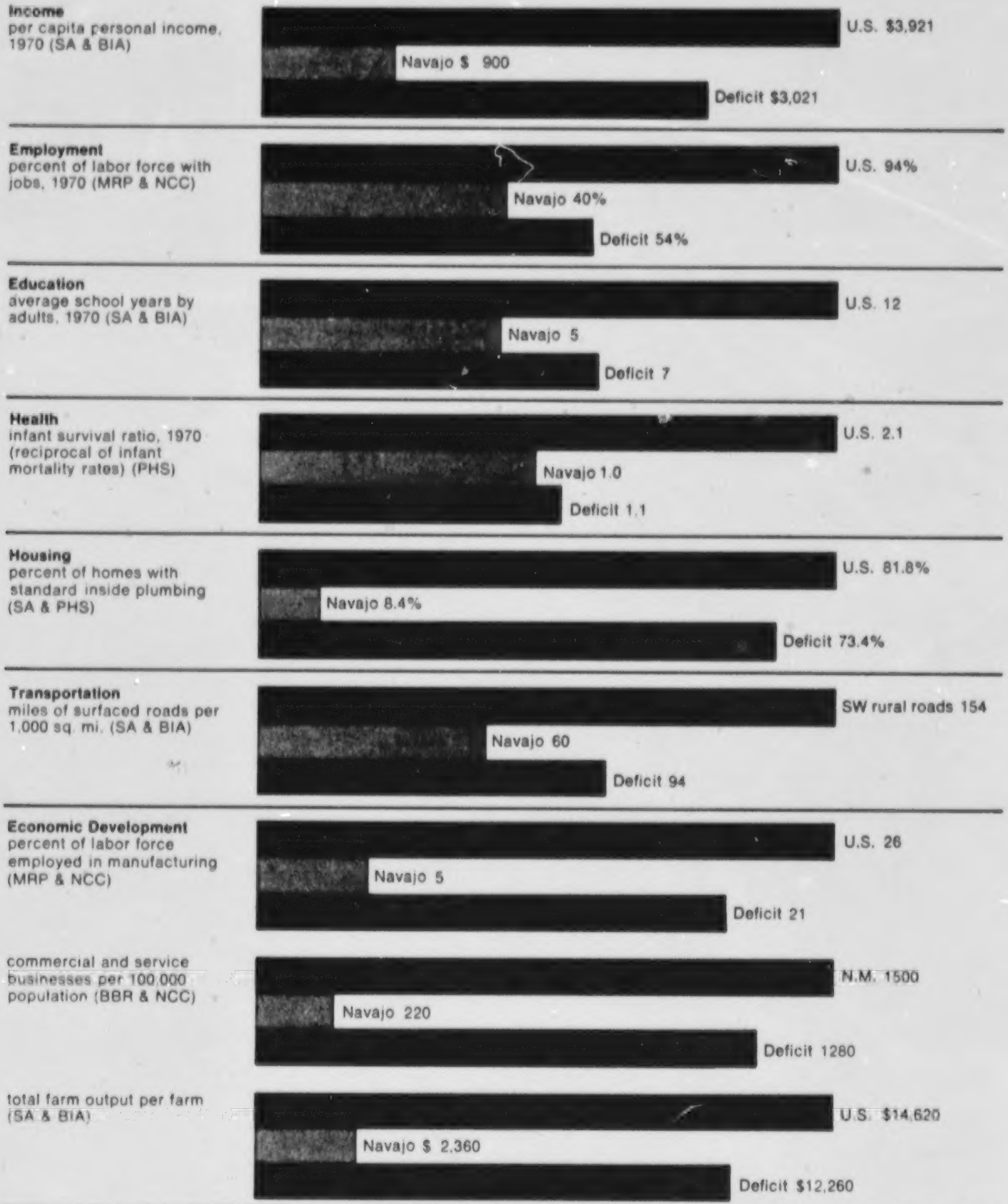
151. Statement by Joseph R. Hardy, Exhibit No. 11, p. 780.

152. *Ibid*.

153. Testimony of Joseph R. Hardy, p. 101.

Table 1

## NAVAJO CATCH-UP REQUIREMENTS: SOCIAL INDICATORS



Sources for Figure 1: SA—Statistical Abstract of the United States, 1970; BIA—Navajo Area Office, Bureau of Indian Affairs; MRP—Manpower Report of the President, 1971; NCC—Navajo Community College; PHS—Navajo Area Office, Public Health Service; BBR—Bureau of Business Research, University of New Mexico.
Reprinted from the *Navajo Ten Year Plan*, Exhibit No. 11, pp. 500-01.

The table below translates the gap shown above into the tribe's own dollar estimates of investment needs over a 10-year period.

## TABLE 2

PUBLIC INVESTMENT (TEN YEAR TOTALS) AND RESULTING EMPLOYMENT (ANNUAL AVERAGES)

| Social Overhead (Public) Sector* (Investment in Human Resources Development) | | |
|---|---|---|
| **Program** | **Investment 10 Years** | **Employment (Per Year)** |
| Education and Manpower Development | $1,210,000,000 | 10,200 |
| Health | 422,000,000 | 3,300 |
| Housing (public sector) | 372,000,000 | 1,500 |
| Roads and other transportation | 740,000,000 | 1,400 |
| Public Utilities | 164,000,000 | 1,100 |
| Public Services | 173,000,000 | 1,900 |
| Parks and Recreation | 137,000,000 | 5,500 |
| Land and Water | 520,000,000 | 1,000 |
| Research & Development | 40,000,000 | 100 |
| TOTAL | $3,778,000,000 | 26,000 |

| Production (Private) Sector (Investment in Directly Productive Activities) | | |
|---|---|---|
| **Industry** | **Public Share** of Investment** | **Employment (Per Year)** |
| Small Business | | |
| Manufacturing, transportation and construction | $ 24,000,000 | 2,200 |
| Retail trade and services | 30,000,000 | 4,700 |
| Large Scale Industry | | |
| Footloose Industry | 13,000,000 | 3,000 |
| Resource utilization | 1,000,000 | 1,700 |
| NFPI | 8,000,000 | 800 |
| Tourism & Recreation | | |
| Motels, etc. | 26,000,000 | 1,200 |
| Arts & Crafts | 10,000,000 | (increased incomes) |
| Agriculture | | |
| Navajo Indian Irrigation Project | | |
| Farms | 30,000,000 | 1,000 |
| Processing | 30,000,000 | 1,000 |
| Crop production | 10,000,000 | – |
| Transforming traditional agriculture: credit, marketing, etc. | 50,000,000 | 5,000 |
| | $232,000,000 | 20,600 |

*Includes current, on-going program expenditures as well as needed additional expenditures. About half of the expenditure totals are for current programs and about half are additional expenditures.

**Public funds will generate private investment in considerable larger amounts. The amount of private funds is estimated in Part II of the Navajo Ten Year Plan's determination of specific business potentials.

Reprinted from Navajo Ten Year Plan, Exhibit No. 11, p. 504.

## TABLE 3

### TRANSFORMING TRADITIONAL AGRICULTURE: TEN YEAR COSTS AND ANNUAL EMPLOYMENT

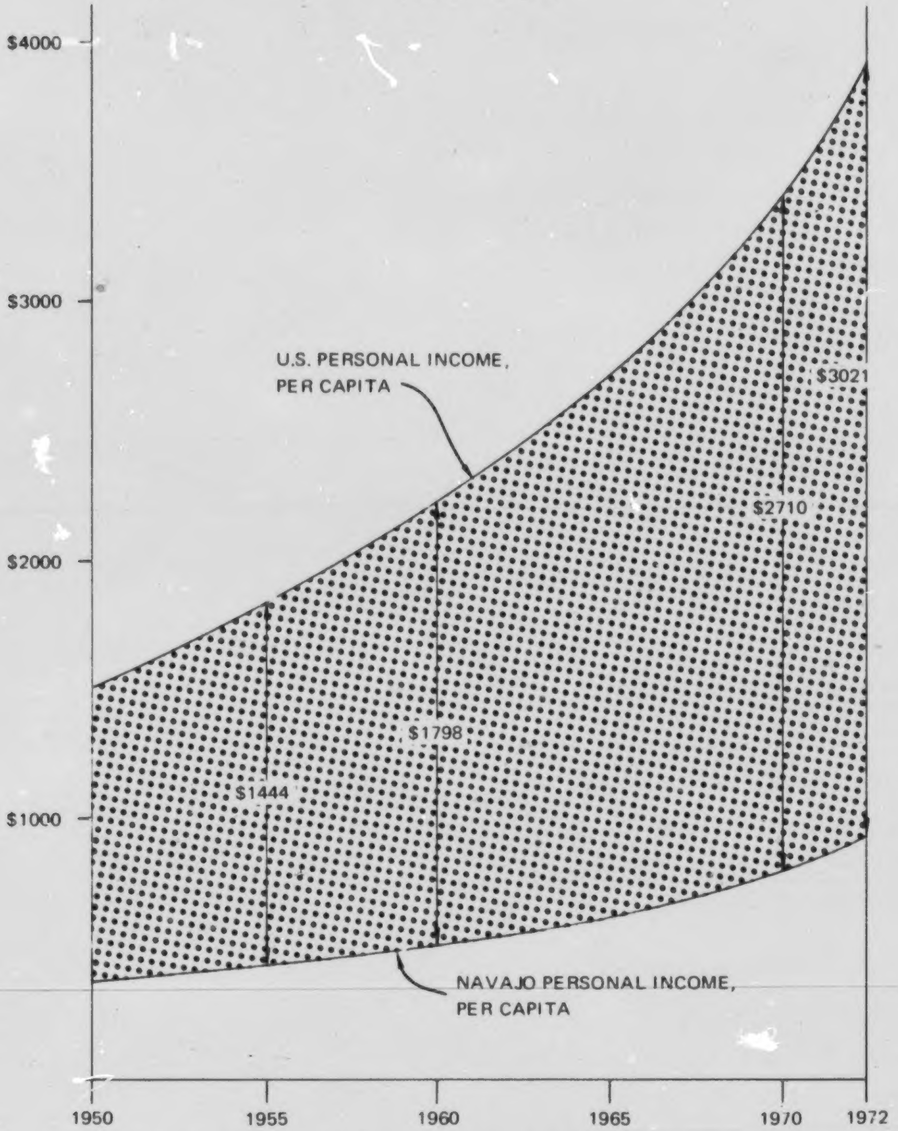
| | Cost (10 Years) | Employment (average per year) |
|---|---|---|
| Navajo Indian Irrigation Project: | | |
| Project construction through 1982 | $150,000,000 | 500 |
| Traditional agriculture area | | 500 (staff) |
| Reseeding, fencing, etc. | 150,000,000 | |
| Wells, stock tanks, etc. | 20,000,000 | |
| Reservoirs, runoff controls, irrigation systems | 100,000,000 | (5,000 families included in Private Sector tables and totals) |
| Income maintenance, stock feed, etc., during soil restoration | 100,000,000 | |
| TOTALS | $520,000,000 | 1,000 |

SOURCE: Navajo Tribal Water Resources Office and BIA.

Reprinted from Navajo Ten Year Plan, Exhibit No. 11, p. 527.

FIGURE 2

THE WIDENING GAP BETWEEN UNITED STATES AND NAVAJO PERSONAL INCOME
(PER CAPITA)



SOURCE: Statistical Abstract of the U.S., B.I.A., and N.C.C.

NOTE: U.S. and Navajo income data are not strictly comparable, but the discrepancy understates the gap that actually exists, i.e., results from showing higher Navajo incomes than actually exist. Income data are in current dollars.

Reprinted from Navajo Ten Year Plan, Exhibit No. 11, p. 506.

# 3. EMPLOYMENT

The dearth of steady employment on the Navajo Reservation accounts in some measure for the lack of substantial private capital for small business development. The reservation's 1974 unemployment rate was 40 percent, [154] a shocking figure when compared with Arizona's 1974 unemployment rate of 5.6 percent. [155]

Navajo unemployment is not explained simply by a shortage of jobs on and near the reservation. A major part of the problem appears to be a total lack of awareness on the part of the BIA, as the trustee of Indian lands, as to what the Navajos' rights are under Title VII of the Civil Rights Act of 1964. [156] Another obstacle is the weak wording of what is known as the "Navajo preference clause" in the tribe's contracts and leases, [157] and the "local preference clause" in BIA contracts. An example of the former is paragraph 18 of the Salt River lease:

> Lessees agree to give preference in employment to qualified local Navajos, it being understood that "local Navajos" means members of the Navajo Tribe living on land within the jurisdiction of the Navajo Tribe. All unskilled labor shall be employed from "local Navajos," if available, providing that applicants for employment as

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[154] Office of Navajo Labor Relations. The unemployment figure for 1973 was approximately 50 percent, and for 1971, 65 percent.

[155] Arizona Dept. of Economic Security.

[156] 42 U.S.C. §2000e (Supp. 1973).

[157] Since tribal lands cannot be sold, anyone wishing to conduct a business on the reservation must obtain a business lease from the tribal government. These leases, of which more than 100 are currently outstanding, contain a clause called the Navajo preference clause, under which the lessee agrees to give Navajos preference in employment.

> unskilled laborers meet the general employment qualifications established by Lessees. Qualified semi-skilled and skilled labor shall be recruited and employed from among "local Navajos." In the event sufficient qualified unskilled, semi-skilled and skilled local Navajo labor is not available, or the quality of work of available, skilled or semi-skilled workmen is not acceptable to Lessees, Lessees may then employ, in order of preference, first qualified non-local Navajos, and second, non-Navajos.

The clause is more noteworthy for its omissions than for what it includes. There is no mention, for example, of training programs, tenure, promotions, or termination.

The typical effect of this clause in the past can be seen in the employment records of the Four Corners project (a major generating station constructed in the northeast corner of the reservation in the 1960's), where Navajos comprised only 8 percent of the construction labor force.[158]

In 1970, as work progressed on the next major construction site, the Navajo (generating station) project, the tribe received a flood of complaints charging that Navajos were being fired without cause and were being replaced by non-Indians.[159] With legal assistance from DNA (the Navajo legal services program), Navajos on the project organized the Navajo Construction Workers Association and filed a discrimination suit with the Equal Employment Opportunity Commission (EEOC).

Among the corporations named as defendants in the suit was the Salt River project, a quasi-governmental corporation that operates a Federal reclamation project under contracts with the Department of the Interior.

Salt River is one of six participants in the Navajo project and serves as project manager. A $900 million venture, the Navajo project consists of several elements, including three 750-megawatt coal fired generating units near Page, Arizona, and a railroad running between the generating station and the Peabody Coal Company's strip mining operations on the reservation's Black Mesa. Construction is scheduled for completion in May 1976. Salt River, as project manager, is responsible for supervising construction of both the railroad and the generating station and has let those contracts to Morrison-Knudsen and the Bechtel Power Corporation, respectively. All three corporations were named in the EEOC complaints.

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[158] Transcript, p. 125.

[159] Testimony of Kenneth White, Contract Compliance Officer, Office of Navajo Labor Relations, p. 122.

Several months after the suit was filed, Tribal Chairman Peter MacDonald wrote to both the Chairman of the EEOC and the Secretary of the Interior to urge prompt action. The investigation that followed in January 1972 was conducted jointly by the EEOC, the Office of Federal Contract Compliance, and the Department of the Interior. The results of the investigation were reported on March 9, 1972; and, according to the testimony of a Salt River executive, the corporation shortly thereafter was requested "in a very forceful manner" by the Secretary of the Interior to renegotiate the preferential employment provision of the lease.[160] In the meantime, the conciliation agreement that resulted from the EEOC complaints reflected a "substantial and significant change," as one Bechtel executive described it, in the interpretation given the Navajo preference clause:

> . . . the preferential employment clause is now interpreted to extend not only to employment, but also to other personnel actions, including locating, tenure, promotions, termination and training. Additionally, the clause has also been extended to the establishment of a separate grievance procedure for Navajos at the Project. 161

Since that agreement, the Navajo proportion of the labor force at the Navajo project has increased from 19 to 22 percent,[162] a significant

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160. Testimony of John Pfister, Associate General Manager, Power, Salt River Project, pp. 177-178.

161. Opening statement of Charles W. Lacey, Construction Manager, Bechtel Power Corporation, Exhibit No. 25, p. 919.

162. Testimony of Thomas Brosé, p. 125.

improvement over the 8 percent Navajo employment on the Four Corners project, when the tribe had no enforcement procedure of its own, and received no Federal enforcement assistance.

Another problem for the Navajo workers was the insistence by the unions at the project that all hiring be done through the union hiring halls in Phoenix and Flagstaff, Arizona, both considerable distances from the construction site. Given the extent of unemployment on the reservation and the transportation difficulties faced by most Navajos, the union hiring hall requirement kept many Navajos from employment.[163]

Through the efforts of the Office of Navajo Labor Relations (ONLR), that problem has been alleviated, but only slightly. ONLR Director Thomas Brosé told the Commission:

> We have worked out a tentative arrangement by which an employee or potential employee in an identified craft for which there appears to be a vacancy at the project can be in a sense located by our office, but the steps following that still are the same. That is to say, a person would come to our office, we would make the initial determination based upon what he tells us as to whether he is potentially qualified for that position, and then he would go to the union hall.

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[163] Ibid., p. 123. Bechtel maintains that it would be inconsistent with international union agreements to hire at the job site rather than through the hiring halls. Testimony of Charles W. Lacey, pp. 186-87. The power company also takes the position that this practice is not prohibited by Arizona's right-to-work law, although there are no Arizona decisions dealing directly with the legality of a nondiscriminatory hiring hall vis-a-vis the State's right-to-work law. The power company relies for support on a Texas case that found nondiscriminatory union hall hiring compatible with the Texas right-to-work law. NLRB v. Houston Chapter, Associated General Contractors of America, Inc., 349 F.2d 449 (1965) cert. denied, 382 U.S. 1026 (1966). Memorandum to Office of General Counsel, USCCR, from Stephen D. Butler, Counsel, Bechtel Corp., March 18, 1974. Under Federal law, it is not unlawful for an employer and a union to enter an agreement whereby the employer agrees to hire new employees exclusively through the union hiring hall as long as there is neither a provision in the agreement nor a practice in effect that discriminates against nonunion members in favor of union members or otherwise discriminates on the basis of union membership obligations. National Labor Relations Board, A Layman's Guide to Basic Law under the National Labor Relations Act, 33, (1971).

> We do have an arrangement where we can transport them to the union hall and then from there they go up to the plant. 164

The arrangement also permits Navajos to keep in contact with the union halls by telephone or mail, instead of having to revisit the hall.

The ONLR is still trying to work out the difficulties with this system. At the same time, it is trying to make sure that the tribe gets its fair share of jobs from future contractors on the reservation. For example, the ONLR now appends bid conditions of its own to federally-assisted construction contracts. These clauses impose upon the contractors a burden of hiring an all or predominantly Navajo work force. There is also a provision for an affirmative action program on the part of contractors to assure training, upgrading, and promotional opportunities to Navajos at all levels, including management. The office's guidelines also require that all apprentices be members of the tribe.[165]

These guidelines were approved by the Solicitor's Office of the Department of Labor as a legal interpretation of Navajo rights under Title VII of the Civil Rights Act of 1964. Before this opinion was issued, a number of Federal agencies resisted the tribe's efforts to incorporate the stronger guidelines into Federal contracts. ONLR Director Thomas Brosé told the Commission:

> For instance, the Department of Housing and Urban Development resisted the inclusion of our documents and the preference provisions in contracts which they were letting to the Navajo Housing Authority last spring, and only when the U.S. Department of Labor Solicitor's opinion came down did HUD concede to us that we can put this document into Federal contracts on the reservation. 166

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164. Testimony of Thomas Brosé, p. 124.

165. Guidelines for the Establishment of Navajo Manpower Utilization Requirements in Construction Activity, Office of Navajo Labor Relations (effective Mar. 1, 1973 and amended Sept. 7, 1973), Exhibit No. 13, p. 799.

166. Testimony of Thomas Brosé, p. 131.

The contracts of Federal agencies generally provide for 20 to 25 percent minority participation, a figure which, as Mr. Brosé put it, "mocks" the provisions of the Navajo preference clause.[167] He has gone to the Assistant Secretary's level in at least three agencies--HUD, HEW, and the Federal Highway Administration--seeking some consistency between the agency's goals and timetables and the provisions of the preference clause. Each time, he testified, the tribe's proposals have met with opposition:

> Without exception, no Federal agency has voluntarily amended their goals and timetables in their own administrative procedures so that there is some relationship to a meaningful enforcement of [Indian] preference . . . . [168]

Commissioner Freeman noted that this lack of Federal response came as no surprise to the Commission, which in recent studies of 40 Federal agencies[169] had found that not a single one was adequately enforcing Federal civil rights laws:

> What we are finding out from your testimony, however, is that those Federal agencies are even worse than I believe our reports to date had recognized, and this is very disturbing because it means that the Federal Government is sort of in partnership with some private agencies that certainly would--Well, I don't want to use the term "rip off" but I think that some of the people have said that the Navajo Nation continues to be exploited and I think this is indicated.[170]

At least 100 contracts and leases on and near the reservation (many of them 50- to 90-year leases) contain the original Navajo preference clause.[171] Under these contracts, the ONLR believes the Navajo proportion of the work force should be at least 60 to 70 percent. Instead, the percentages hover around 20 percent.[172] The tribe, through negotiations such as those described above with the Bechtel Power Corporation, hopes to improve conditions under these contracts and to persuade contractors and lessees to abide by the new ONLR guidelines. As ONLR Director Brosé explained the situation, negotiation, at this point, is the tribe's only feasible choice:

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[167] Ibid.

[168] Ibid., p. 132.

[169] See U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--A Reassessment (January 1973).

[170] Transcript, p. 132.

[171] Testimony of Thomas Brosé, p. 130.

> . . . the reason why the tribe has come forth with these guidelines is because we have found that reliance upon the good faith compliance with the original leases does not leave sufficient recourse for the tribe. The tribe is faced with the question of breaking the lease and stopping employment, limited though it is, of Navajo employees, and it's not a very pleasant dilemma for the tribe to find itself in. 173

The alternative of going to court with contractors who are in violation of the preference clause is also impractical for another reason--the tribe's limited resources. As Mr. Brosé testified:

> If you look at the people who hold leases on the reservation, we are talking about the Fortune 500. There are very few fly-by-night operators on the reservation. The funds and legal services available to those corporations mean, I think, unless one is extremely naive, that those companies will take this to the last course of legal relief, and that means for the tribe, $200,000 to $300,000 in legal fees for each case. 174

Commissioner Freeman suggested that it is the duty of the BIA and the Secretary of the Interior, who approved the contracts, to put the weight of the Federal Government behind the effort to get compliance. Mr. Brosé indicated the futility of this hope by pointing to the BIA's past record, citing, for example, its delay of more than 1 year in approving the tribe's decision to set up an Office of Navajo Labor Relations.[175]

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172. Ibid., p. 132.

173. Ibid., p. 128.

174. Ibid., pp. 132-33.

175. Ibid., p. 133.

## The BIA and Contract Enforcement

The contrast between the tribal view of Navajo employment and the official BIA view became apparent in the testimony of two of the BIA's main contracting officers in the Navajo area. They were Robert A. Dudley, Acting Chief of the Division of Facilities Engineering, whose office awards and supervises all contracts (nationwide) for the construction of BIA facilities, including schools and school-related facilities, and Thomas G. Brandt, Chief of the BIA Navajo Area Property and Supply Office, which is responsible for contracts covering some types of construction (roads, dams, etc., but not buildings), procurement and contracting (including contracting for education), and property management and inventorying of BIA land and property, all on the Navajo Reservation.

Mr. Brandt testified that in the previous year his office's contracts amounted to about $60 million.[176] Each of these contracts, as well as the facilities construction contracts administered by Mr. Dudley's office, contains what is called a "local preference clause," which reads:

> Preference in employment for all work to be performed under this contract, including subcontracts thereunder, shall be given to local residents, subject to the provisions of Clause 21, Equal Opportunity, SF 23-A. 177

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[176] Testimony of Thomas G. Brandt, p. 143.

[177] Under DOI regulations, use of this clause in BIA construction contracts is mandatory. 41 C.F.R. 14-7.602-60(7) (1971). While the local preference clause is restricted by the equal opportunity provision (clause 21) of Standard Form 23-A (general provisions for construction contracts), the equal opportunity clause is itself subject to the provisions of clause 23, which provides for preference to Indians by employers on or near a reservation. What all this comes down to is a mandatory preference for local residents, coupled with a ban against discrimination based on race, color, religion, sex, or national origin, but with an allowance for preference for Indians if the employer happens to be on or near a reservation. See Section 701(b)(1) and 703(i) of Title VII of the Civil Rights Act of 1964, 78 Stat. 253-257, 42 U.S.C. 2000e (Supp. 1973), which pertains to Indian tribes as employers and to preferential treatment in employment for Indians residing on or near a reservation. There apparently is no guarantee, however, that the Indian preference clause, as difficult as it is to track down, will even be included in a contract along with the local preference and EEO clauses.

Mr. Brandt testified that this provision is intended by the BIA as a Navajo preference clause and that it is explained as such in preconstruction conferences with contractors.[178] According to Mr. Dudley, however, the BIA contracting officers have no authority to say that local employees hired under the clause must be Indian; "we can only urge this."[179]

In a letter to the Office of Federal Contract Compliance, the Department of Labor's Solicitor's Office advised that under Title VII of the Civil Rights Act of 1964,[180]

> The preference for Indian employment is an absolute one which may work to the total exclusion of all non-Indian employees, trainees, apprentices, or other members of the work force. The absolute preference for Indians, may, where Indians and non-Indians are both members of the work force on or near a reservation, also extend to promotions, transfers, and layoffs, as well as any other benefits of employment. 181

The BIA has never expressed its concurrence in this interpretation. It is not surprising, therefore, that employers on the reservation, whose contracts include the local preference clause, have refused to give it more than a literal interpretation.

Asked to comment on reports that contractors with whom the BIA deals are reading this preference literally and hiring local residents who may be Anglo, in violation of Title VII of the Civil Rights Act of 1964, Mr. Dudley said no such situation had been brought to his attention.[182]

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178. Ibid., p. 143.

179. Testimony of Robert A. Dudley, p. 164.

180. Section 703 of Title VII states: "Nothing contained in this Title shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which preferential treatment is given to any individual because he is an Indian living on or near a reservation."

181. Letter from Ronald M. Green, Acting Associate Solicitor, U.S. Department of Labor, to Philip Davis, Director, OFCC, August 17, 1973.

182. Testimony of Robert A. Dudley, p. 155.

He also testified that in 1970, after conferences with representatives of Arizona Indian tribes, a more specific Indian preference clause was drafted, but it was never approved by the Secretary of the Interior.[183] Even that clause, however, as Commissioner Freeman pointed out, "is considerably less than what the situation requires" and what Title VII authorizes.[184]

An official letter from the BIA in Washington to the Navajo Tribe's Office of Program Development on September 9, 1972, asserted BIA interest in the development and use of the Indian preference clause but added, "we also must be certain that proper authority exists for the use of such a clause."[185] Apparently, the BIA is still searching for this authority, which the Department of Labor's Solicitor's Office has already found under Title VII of the Civil Rights Act of 1964.

Further testimony by the BIA contracting officers revealed a complete lack of initiative in enforcement of Indian employment rights. Mr. Brandt testified, for example, that he was ultimately responsible for enforcement of the local preference clause in the $60 million worth of contracts let by his office in a single year, but he was not sure in what form the Indian employment data reached his office, or whether he even had a reporting system which provided that information.[186]

Mr. Brandt also testified that, despite the standard equal opportunity clause in BIA contracts for services and supplies, his office has never required breakdowns on Indian employment from suppliers--not even local suppliers; he has never made a formal check on their employment practices and, in his 5 years as the area's chief contracting officer, he has never cancelled or threatened to cancel a contract for noncompliance with the EEO clause.[187]

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[183] Ibid., p. 152.

[184] Transcript, p. 161. See note 180, above.

[185] Letter from Donald F. Asbra, Acting Chief, Division on Contracting Services, BIA, to Browning Pipestem, Office of Program Development, Navajo Nation, Sept. 22, 1972, Exhibit No. 24, p. 895.

[186] Testimony of Thomas G. Brandt, p. 144.

[187] Ibid., p. 162.

Mr. Brandt explained that his office has depended, "to a great extent, on the tribe to point out to us the problem areas in the contract and in the contractor's operation." He said this has been necessary because of "the lack of staff and lack of time," adding, "We feel the tribe has a vested interest here, and they certainly will let us know when things are not as they should be, and they do." [188]

Vice Chairman Horn, suggesting that the BIA was less concerned about the "people" aspects of its contracts than the physical aspects, asked whether the Bureau would wait until a road fell in before investigating a contractor's compliance with material specifications, or whether they would supervise the contract as the work progressed.

> Vice Chairman Horn. I think what the Commission is saying is that the Bureau of Indian Affairs has an affirmative responsibility, under Federal law and Presidential Executive orders, to assure itself that the people aspect of contracting complies with Federal policy. And I suspect they sure would do something on the physical aspects of Federal contracting or the fraud aspect of Federal contracting.
>
> Mr. Brandt. Well, Mr. Horn, in defense of the Bureau, I would like to say, for one thing, when I assumed this job, we were spending about $18 million a year. We are now--in the past fiscal year finished, just ended, we spent something over $60 million.
>
> This thing has grown at a tremendous rate, and I think it's axiomatic that the administration gets staffed up last in any growth in organization. 189

Mr. Dudley, whose office receives minority employment data collected by "personal observation," admitted that the BIA might be "remiss" in this regard. [190] He was asked by Commission Staff Director John A. Buggs whether the site count made by his inspectors is submitted to the contracting office in a written statement:

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188. Ibid., p. 155.

189. Ibid., p. 161.

190. Testimony of Robert Dudley, p. 163.

> Mr. Dudley. They include it in their diary which they keep on a daily basis.
>
> Mr. Buggs. But does that ever get to you?
>
> Mr. Dudley. It comes into our office, and our contract compliance officer, who reviews it.
>
> Mr. Buggs. And what does he tell you? Does he tell you that things are good, bad, or indifferent?
>
> Mr. Dudley. Actually, he hasn't. But I think that we, perhaps, are remiss in the sense that we accept what is--unless someone--you know, if we have a complaint from an Indian group that says they are not complying. If we get 30 percent employment, we--I guess it's done wrong by accepting it as being fact. 191

Onsite observations are not conducted according to any specific guidelines, because the BIA has not issued any.[192] Neither has the BIA conducted any conferences of equal employment opportunity officers to share experiences and formulate guidelines.[193] The judgment exercised in these site observations, therefore, can hardly be considered educated judgment.

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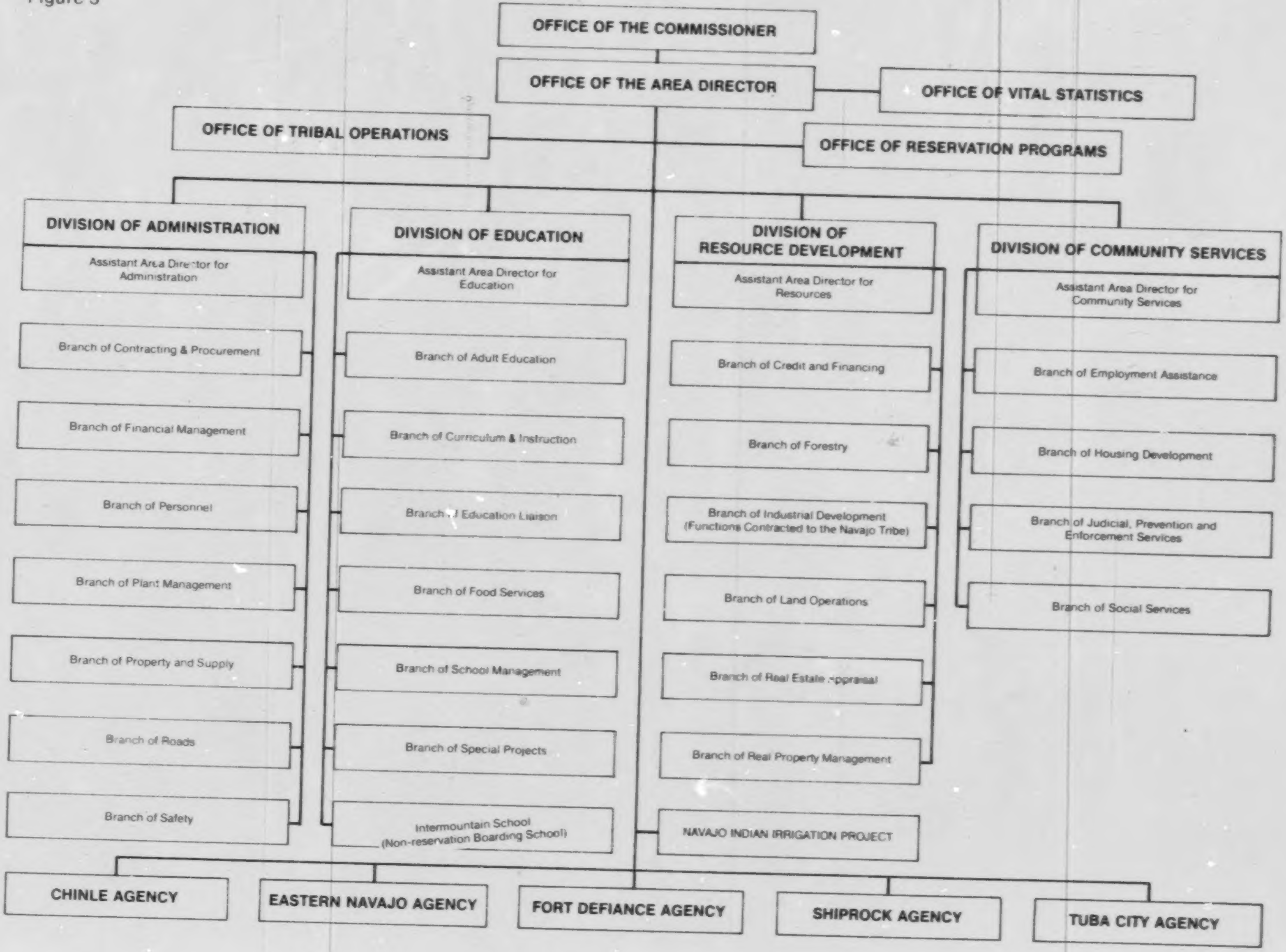
191. Ibid.

192. Testimony of Thomas G. Brandt, p. 165.

193. Ibid.

Figure 3


OFFICE OF THE COMMISSIONER
OFFICE OF THE AREA DIRECTOR
OFFICE OF VITAL STATISTICS
OFFICE OF TRIBAL OPERATIONS
OFFICE OF RESERVATION PROGRAMS
DIVISION OF ADMINISTRATION
Assistant Area Director for Administration
Branch of Contracting & Procurement
Branch of Financial Management
Branch of Personnel
Branch of Plant Management
Branch of Property and Supply
Branch of Roads
Branch of Safety
DIVISION OF EDUCATION
Assistant Area Director for Education
Branch of Adult Education
Branch of Curriculum & Instruction
Branch of Education Liaison
Branch of Food Services
Branch of School Management
Branch of Special Projects
Intermountain School (Non-reservation Boarding School)
DIVISION OF RESOURCE DEVELOPMENT
Assistant Area Director for Resources
Branch of Credit and Financing
Branch of Forestry
Branch of Industrial Development (Functions Contracted to the Navajo Tribe)
Branch of Land Operations
Branch of Real Estate Appraisal
Branch of Real Property Management
NAVAJO INDIAN IRRIGATION PROJECT
DIVISION OF COMMUNITY SERVICES
Assistant Area Director for Community Services
Branch of Employment Assistance
Branch of Housing Development
Branch of Judicial, Prevention and Enforcement Services
Branch of Social Services
CHINLE AGENCY
EASTERN NAVAJO AGENCY
FORT DEFIANCE AGENCY
SHIPROCK AGENCY
TUBA CITY AGENCY

# 4. EDUCATION

The Navajo Reservation is served by a multiplicity of school systems: the three public school systems in Arizona, New Mexico, and Utah, the schools run by the Bureau of Indian Affairs, and a variety of private schools. These systems are in no way coordinated, one with the other, in the positive sense of a unified educational system. From the Navajo viewpoint, however, all of these schools share common disabilities. Each system is Anglo designed, each continues to be Anglo administered, and none has any significant cultural identification with the people it serves. Educational achievement statistics are proof that these schools have done little to improve the educational status of the Navajo.

The United States Government assumed responsibility for educating Navajo children under the Treaty of 1868.[194] The BIA established compulsory school attendance for the Navajo in 1887, and by the early 1900's there were BIA boarding schools in most of the major centers on the reservation.[195] Day schools were established on the reservation in 1930. By 1972, 52,647 of the 57,144 Navajo children between 5 and 18 years were in school,[196] and yet the median education achieved by the adult Navajo remained at a fifth grade level;[197] compared with a national median of 12 grades.[198] While 22,094 Navajo students were enrolled in BIA schools, only 3,284 of that total were in high school and only 609 graduated from the 12th grade.[199]

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[194] Treaty between the United States of America and the Navajo Tribe, June 1, 1868, 15 Stat. 669, Article VI.

[195] Navajo Division of Education, "Strengthening Navajo Education" (June 1973).

[196] BIA, Statistics Concerning Indian Education, Fiscal Year 1972, Table 1, p. 8 (hereinafter cited as BIA Statistics).

[197] U.S. Bureau of the Census, Census of Population: 1970, Subject Reports, Final Report PC(2)-1F, American Indians, Table 11 at 146 (hereinafter cited as Census, PC(2)-1F).

Almost 2 days of testimony on education for the Navajo yielded no single answer as to why so many Navajo students leave school in the lower grades. What it did reveal was that the reservation's four distinct school systems are plagued with numerous problems, and that their solution is bound to be delayed--if not blocked--by this very multiplicity of systems and administrations.

As Navajo Chairman Peter MacDonald pointed out, the problem presented by the multiple school systems on the reservation is a pervasive one:

> It affects the employment of Indian teachers, it affects the construction of needed school buildings, it affects the establishment of a uniform curriculum that is necessary for the Indian culture, bilingual education and other education that we see as a basic necessity in order to have an education that is relevant to the needs of the Navajo people. 200

Since 1972, when it established the Navajo Division of Education, the tribe has been developing a comprehensive plan for unification of the BIA school network with the three State public school systems.[201] The plan does not call for the tribe to operate the reservation schools; instead the tribe would set uniform standards in such areas as teacher

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198. Census, Vol. 1, Characteristics of the Population, Part 1, U.S. Summary-Section 1, Table 88, at 386.

199. BIA Statistics, Table 8, p. 24.

200. Testimony of Chairman MacDonald, pp. 13-14.

201. Establishment of the Navajo Division of Education was just one of many efforts by the tribe to solve education problems on the reservation. Before fiscal year 1973, little if any involvement by the tribe was allowed. Since fiscal year 1973 the tribe has launched a number of programs including teacher education, special education, preschool assistance, planning and development, school administrators training, adult education, and the NIE Research Project. Letter from Dillon Platero, Director, Navajo Division of Education, to John A. Buggs, Staff Director, USCCR, Mar. 17, 1975.

certification and curriculum content.[202] A key element in this unification effort is the tribe's hope for designation by the Federal Government as a Tribal Education Agency (TEA). With that status, the tribe, like any State education agency, would have administrative responsibility for coordinating all schools within its boundaries and, thus, would be better able to unify the four existing school systems.[203]

This plan for Navajo authority over all reservation schools was just one aspect of the common theme throughout the Window Rock hearing: the desire for self-determination in the tribe's own affairs. In education, the groundswell developing around that concept became apparent in the testimony of students, parents, and teachers, who traced many of the schools' problems to the century-old conflict between the Navajo and Anglo cultures. The rest of this chapter describes those problems.

## Curriculum

Basic to the Navajo child's understanding of the education that is offered is the ability to read and speak English. According to current Bureau of Indian Affairs figures, 70 percent of the Navajo children entering school cannot function in English at a first grade level.[204] The Supreme Court recently upheld a HEW interpretation that Title VI of the Civil Rights Act of 1964 is violated when school boards do not develop remedial programs for non-English-speaking children; every

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202. Navajo Division of Education, Education Programs for the Navajo Nation, Program 1 (August 1973).

203. See the Commission's recommendations, below, p. 137. All three States have already expressed interest and willingness to cooperate with the Navajo Division of Education in its coordination efforts. Interview with Dillon Platero, Director, Navajo Division of Education, August 9, 1973.

204. Telephone interview with Faralie Spell, Supervisory Education Specialist, BIA, Navajo Area Division of Education, April 5, 1974. A figure of 90 percent, based on a study done 2 or 3 years ago, was given in testimony by Ms. Spell, p. 361.

effort must be made to give all children an equal opportunity to learn.[205] One of the topics explored by the Commission was how the various school systems assist the Navajo child to learn English. Does the learning process respect the child as a Navajo—that is, not merely a child who is deficient in English, but a child who can already speak one language and needs to learn another?

One answer to this question was provided by a former Navajo kindergarten teacher in the Chinle public school system. Marie Reyner testified that her class was at least 90 percent Navajo and that, because she can speak Navajo, she occasionally used a few words to help the children understand and to motivate them. The school administration criticized her use of Navajo in class, citing an Arizona statute requiring that "All schools be conducted in the English language."[206] Ms. Reyner's teacher evaluations stated in October 1972 that she:

> ...did not use proper channels when she taught in Navajo in her class. Failed to get clearance first.

And in February 1973, it was reported that Ms. Reyner:

> ...has on several occasions actually taught "Navajo Words" even over the objection of the school's administration. 207

The Navajo witnesses—students, parents, and teachers—were unanimous in their support for the concept of bilingual education—course materials taught interchangeably in Navajo and English. With the Navajo Nation's increasing desire for self-determination has come a renewed sense of identity. This is particularly pronounced among the Navajo youth. Since the coming of Anglo education to the Navajo Reservation, the emphasis on learning English has had its effect on

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205. Lau v. Nichols, 414 U.S. 563 (1974).

206. ARS 15-202 (1970); testimony of Marie Reyner, pp. 441-42.

207. Teacher Evaulation, Chinle Public School, Oct. 25, 1972, and Feb. 22, 1973.

fluency in Navajo--and on communication between the generations. According to a student from Tuba City, Navajo youth have become so awkward in their mother tongue that older people cannot resist laughing when young people try to speak Navajo.[208] Students from four of the five public school districts represented at the hearing testified to the need for more bilingual studies in their schools.[209]

Parents also supported their children's wishes to learn in Navajo. Carol Big, a kitchen manager in a Kayenta (Arizona) public school, who has had little formal education herself, stated that none of her children can speak Navajo. She spoke of her daughter:

> I have a very intelligent child, and she thinks what she's getting there is not enough. She would like to learn about her own people. She would like to know where she comes from. She would like to learn to speak Navajo. 210

There are, however, few Navajo teachers on the reservation. Owing to this shortage, many schools on and near the reservation make use of Navajo teacher aides in the lower grades for the specific purpose of assisting the children when they cannot understand the English spoken around them. Although this is useful to the child, it may not be the best or only answer to the lingual-social adjustment the child faces. Nor does it extend beyond the lower primary grades; once the child is presumed to be able to function in English, there is no further assistance from a Navajo-speaking aide. A DNA (legal services) staff member from San Juan County, Utah, who specialized in education, described the situation:

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208. Testimony of Vanessa Brown, p. 269.

209. Window Rock, Kayenta, Tuba City, Gallup-McKinley. No students testified from the fifth school system, San Juan, but testimony from community representatives supported the need for additional bicultural course offerings.

210. Testimony of Carol Big, p. 294.

> The district claims to have a very good bilingual program. Now, if you consider [having] interpreters [as] having a bilingual program then I'd say they are right. But the aides and the tutors do not do much more than interpret. When a child cannot understand English then...[the aides] resort to Navajo. 211

Little attention is paid to Navajo language in the upper grades. Most high schools have one or two Navajo language classes but teach no other subject in the Navajo language. Again, the reason given is the shortage of trained teachers who can speak Navajo.[212]

The BIA school system has served the reservation longer than any other and has as its sole function the education of the Navajo. Yet, no courses in the Navajo language are offered in the BIA schools.[213] These schools do make extensive use of Navajo teacher aides in the early grades, but the aides do not teach, they translate.

Despite their long history on the Navajo Reservation, until 5 years ago the BIA schools stuck to one very traditional form of language instruction: English as a Second Language (ESL). This method stresses the use of English and all courses are taught in English. The Navajo language is utilized only when the child cannot understand without translation assistance; no Navajo language skills are developed as they would be in a bilingual program. Two sets of second language learning materials are now available to the BIA teacher: the CITE program is traditional ESL and was developed through the University of California at Los Angeles by Consultants in Teaching Total Education; NALAP (Navajo Language Arts Program) is a less structured program developed under the direction of the BIA Navajo Area Division of Education.[214] The BIA points out that, while these programs were developed under the supervision of non-Navajos, input was sought from Navajo consultants and Navajo parents.

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211. Testimony of Jack Hennessy, p. 250.

212. Testimony of A.C. Woodburn, Superintendent, Gallup-McKinley County School District, pp. 230-31.

213. Testimony of Faralie Spell, p. 363.

214. _Ibid._, p. 363.

While bilingual education has gained substantial support among the Navajo, the BIA has shown only cautious interest in trying it. Experimental bilingual programs have been set up in only 6 of the 60 BIA schools on the reservation. Witnesses from the BIA Navajo Area Division of Education were asked whether the BIA intends to expand the program. They responded that such a decision must be left to the parents.[215] In view of the general support expressed at the hearing for bilingual education, it seems probable that many parents with children in BIA schools would welcome such an expansion.

The only Navajo teacher on the staff at Gallup-McKinley (New Mexico) High School spoke of the need for more bilingual education and noted that the interest being shown by students all over the reservation had had a positive effect on school and community.

> ...I think we have to give credit to the young people,...for driving home to us the value of this language, the beauty of it, the importance of it, and they are the ones who are the force behind us working to preserve it. 216

Gallup-McKinley High School students had been trying for more than a year to initiate support from the local chapters for more bicultural programming in the Gallup-McKinley County schools.[217] A number of those chapters have passed supportive resolutions stating in part:

> ...Bilingual [bicultural] education, for Navajo children, is the use of two languages, Navajo and English, as the medium of instruction in a well organized program which encomposses part or all of the curriculum and includes the study of the history and culture associated with the mother tongue...It is the desire of the Navajo people to encourage bilingual [bicultural] education in

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215. Ibid., p. 363; and testimony of Abraham I. Tucker, Acting Assistant Area Director, BIA Navajo Area Division of Education, p. 372.

216. Testimony of Donna Parra, pp. 228-29.

217. Testimony of Marlene Hoskie, p. 220.

> Gallup-McKinley County Schools to equip Navajo children to go as far and as fast as their talents and energies might take them. 218

Many Navajos feel that much of the traditional teaching done by the family in the home is completely discounted by the Anglo education system. A Gallup-McKinley County Board of Education member who was also director of the community-controlled school at Ramah, New Mexico, explained how the Indian people had always been intimidated into thinking that the "American Way" is the best way of education. He expressed his view on the need for educational experiences to be complementary:

> ...there must be a total community education program so far as we Navajos are concerned, to point out that the education that they had--their own Indian education--is just as good as the education that [others] are imposing on them. 219

The director of the Indian Cultural Curriculum Center for the Tuba City public schools also had children in those schools. It was her belief that bilingual education and Indian studies would encourage students to stay in school, develop leadership among those students, and instill in them a desire to help the Navajo people.[220]

All but one of the public high schools represented at the hearing offered at least one course in Navajo studies.[221] The superintendent of the Gallup-McKinley County public schools stated that planning for the development of bilingual studies was in progress, and added that Navajo was being offered as a foreign language elective. Mr. Woodburn explained,

> We have not yet got to the point in our high school program where we are teaching science and social studies and the other content fields in Navajo... These materials, at this point, have not been

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218. Resolution of the Local Communities in Gallup-McKinley County School District, Exhibit No. 40, p. 1092.

219. Testimony of Abe Plummer, p. 237.

220. Testimony of Marjorie Thomas, pp. 269-70, 274-75.

221. San Juan, Tuba City, Kayenta, and Window Rock.

> developed to the extent, nor has our expertise in teaching these been developed to the point where we can do it. 222

Mr. Woodburn did not directly address the question of bicultural programming--whether it might be possible to offer a course in Navajo studies, such as history or culture--although Gallup-McKinley High School had on its staff two Native American teachers, one of whom was Navajo.[223]

As mentioned above, the lack of qualified teachers is often given as a reason for not doing more, faster, in the development of bicultural studies. Where there are qualified Navajo teachers on staff, however, their ideas on curriculum development frequently are not solicited, or may be solicited and then ignored. A kindergarten teacher from the San Juan School District testified that she was asked to participate in a curriculum planning meeting. Part way through the discussion, the director of curriculum planning announced that he had already made a decision, which proved to be unrelated to any of the suggestions made by the participants.[224]

Witnesses from the BIA Navajo Area Division of Education made frequent reference to the pivotal role parental opinion plays in formulating BIA education policy. From their testimony it would seem there is no such thing as a unilateral BIA decision on education for the Navajo Reservation.[225] And yet, despite the widespread support for bicultural programming expressed at the hearing, BIA schools offer little in the way of bicultural studies for the Navajo child.

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222. Testimony of Superintendent A.C. Woodburn, p. 234.

223. Testimony of Robert Livingston, p. 220.

224. Testimony of Arlene Dennison, p. 245.

225. Testimony of Abraham I. Tucker, pp. 353, 356-57, 375-58, 363, 384; Faralie Spell, pp. 354, 365.

The Acting Assistant Area Director, BIA Navajo Area Division of Education, testified that there is a divergence of opinion among Navajo parents, [226] that many of them are against the idea of teaching Navajo language and culture in school. This conclusion, however, seemed to be based entirely on isolated examples of hearsay, two and three times removed. He first cited a report from a BIA staff member purporting to quote parents at a BIA education conference as saying they did not want their children to go to school to learn bilingually or biculturally, but to learn English. [227] His second reference was to a school where the Navajo children were not enrolling in the bilingual-bicultural classes offered, allegedly because the parents in that area are members of a religious sect that is "more assimilated than, let's say, the Navajos elsewhere" [228] and do not want their children in those classes. Finally, he said his wife, a teacher in the Window Rock public schools, was told by a Navajo teacher there that some of the parents did not like having a non-Indian teach Navajo culture. [229]

It was 1969 when the BIA finally began to evaluate the need for possible changes in the traditional curriculum offered in BIA schools. Curriculum committees composed of BIA employees were established for each academic subject area, including guidance, in each BIA school. These committees spent the next 2 years determining, with suggestions from students and advisory school board members, [230] what the needs of the children were. [231] The actual writing of the guidelines was done by the BIA Navajo Area Division of Education:

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[226] Testimony of Abraham I. Tucker, pp. 371-72, 384.

[227] Ibid., pp. 371-72, 384.

[228] Ibid., p. 384.

[229] Ibid.

[230] Advisory school boards to BIA schools have only been in existence on the Navajo Reservation since authorized by the tribe in 1969. Testimony of Mr. Tucker, p. 358.

[231] Testimony of Faralie Spell, pp. 354-55.

> ...in writing the curriculum guidelines, in some instances--and guidance was an example--we felt that within our own house, we had the necessary expertise to write the guidance curriculum guidelines because of the fact that our concept of guidance is considerably different than that you get in college courses... . 232

When asked by Vice Chairman Horn whether the BIA had any established goals in mind for the increased achievement level of Navajo students, and how long it might take to accomplish such goals, the Acting Assistant Area Director, BIA Navajo Area Division of Education, replied that the BIA had no time plan, but a philosophy that included goals and a program to meet those goals. While admitting that program evaluation had been weak, although a system was being worked on, he stressed the point that the emphasis to date had been on program input. [233]

Witnesses from the BIA Navajo Area Division of Education were not wholly negative to the idea of bilingual-bicultural education, but neither were they very supportive. Their testimony on curriculum and school administration reveals the BIA resistance.

-- Only 6 of the 60 BIA schools have an experimental program in bilingual-bicultural programming. 234

-- The BIA claims decisions on curriculum must be left to the parents, ostensibly through the advisory boards. 235 But these boards have no decisionmaking authority.

-- The BIA claims that teaching in both Navajo and English is only one type of bilingual-bicultural programming and prefers to use other methods. 236

-- The agency insists that the use of Navajo teacher aides in the early grades is an adequate form of bilingual-bicultural programming to meet the need. 237

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232. Testimony of Faralie Spell, p. 355.

233. Testimony of Abraham I. Tucker, pp. 378-79.

234. Testimony of Faralie Spell, p. 363.

235. Ibid., p. 363; testimony of Abraham I. Tucker, p. 372. See discussion of advisory school boards, pp. 82-84 below.

236. Testimony of Abraham I. Tucker, p. 371.

237. Ibid.

Since the use of Navajo teacher aides seems to be closely tied to both ESL and what is described above as a form of bilingual-bicultural education, it appears that the BIA Navajo Area Division of Education makes no clear distinction between those two instructional methods.

The tone of the BIA education testimony was neutral--as if the BIA educational planners were only instruments in the hands of the Navajo people. The facts, however, speak for themselves. While there may be more input from BIA parents today, whatever progress has been made toward parental involvement has been slow. The BIA schools continue to be run by the BIA, with a predominantly Anglo staff. The overwhelming majority of those who have decisionmaking authority--school teachers and administrators--are non-Indian. Those who have no such authority--teacher aides and maintenance people--are Navajo.[238]

Against this background, the BIA Navajo Area Division of Education issued a revised draft of its educational goals on October 2, 1973. It reads, in part:

> Educational programs for Navajo children and youth should be developed...To maintain pride in his heritage, to cherish that certain body of tradition his people value enough to preserve from generation to generation, and to respect the culture and heritage of others. 239

Textbooks used in public schools often aggravate cultural problems. Student witnesses from Gallup-McKinley High School were particularly concerned about the biased views in textbooks. According to one witness, the texts used in the history course at Gallup-McKinley were written from an Anglo point of view, emphasizing Anglo contributions to the development of the United States and omitting the American Indian's side of

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238. Ethnic Breakdown of Staff Employed in the 67 BIA Schools Serving the Navajo Reservation, Exhibit No. 52, p. 1236.

239. Navajo Area Philosophy and Objectives of Education, Exhibit 54, p. 1264.

the story.[240] Asked what steps he had taken to correct this situation, Superintendent Woodburn stated that he had brought it to the attention of the instruction division where some action would be taken. He said that as a matter of economy the district had not eliminated all textbooks critical of a particular religious or ethnic group, but,

> We have instructed our teachers to not use that particular part and, if the students ask questions, point out that this is not the purpose, our purpose or the purpose of education, to be critical of races or people. 241

Community-Controlled Schools: An Alternative

As an alternative to both public and BIA schools, the Navajo people have taken some steps toward local control of the schools. At the time of the hearing, there were four experimental Navajo-controlled schools on the reservation.[242] Formerly run by the BIA, each of the incorporated schools had a BIA contract for community operation with BIA funding.

The emphasis in the contract schools is on making education relevant to the Navajo child living in a Navajo community. Much of the instruction is done in Navajo, using a bilingual method of course presentation. The curriculum is largely bicultural, so that the Navajo students learn about their history and culture. The Navajo director of Rough Rock Demonstration School[243] was asked what the school was meant to demonstrate. She responded that community control was being demonstrated--and growing out of this, a more Navajo-related educational experience: Indian programs, incorporation of Navajo culture into the curriculum, inclusion of parents in the classroom setting, and use of Navajo in the classroom.

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240. Testimony of Marlene Hoskie, p. 220.

241. Testimony of A.C. Woodburn, p. 236.

242. Borrego Pass, Ramah, Rock Point, Rough Rock: referred to also as "BIA contract schools," or "demonstration schools."

243. The Rough Rock School Board, Inc., contracted with the BIA in 1966 to become the first community-controlled school on the Navajo Reservation.

Parents, students, and teachers from these schools testified at the hearing. All expressed strong support for this Navajo-oriented education. They liked being consulted on educational planning and being involved in implementation of the plans.[244] One student said she felt "a lot more confortable" at a Navajo-controlled school (Rough Rock) than at the previous schools she had attended.[245] While the number of students who run away from BIA schools has always been sizeable,[246] a Navajo language teacher from Rock Point said that, after Rock Point became a community-controlled school, fewer children ran away.[247]

The director of the school at Ramah compared the educational approach used at his school with other systems on the reservation.

> ...when we contrast a contract school that the Indian people are running themselves as versus a public school, a Bureau school, I think in our case we have been able to identify the educational needs of the students,...because we are a small body and...we have really no one to hassle us excepting the communities that we are working with...and we have been able to gear...our curriculum to meet those particular and very special needs, curriculum that would not only speak to developing cognitive skills but also encourage the student to think of himself [herself] as a person. 248

The community-controlled schools are still in the experimental stage. They have not been in business long enough to have their achievements fully evaluated. They are trying new methods, particularly bilingual and bicultural programming. The response to these methods has been positive; support has come from students, parents, and the larger

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244. Testimony concerning community-controlled schools, pp. 345-51.

245. Testimony of Ruth Todacheeney, p. 346.

246. Testimony of Lowell Findley, p. 385.

247. Testimony of Stella Tsinajinnie, p. 348. In the 1972-73 academic year, 7 out of 318 students ran away from Rock Point School; 1,500 out of 22,904 students ran away from BIA schools.

248. Testimony of Abe Plummer, pp. 233-34.

community. At this point it can at least be said that these schools have provided an alternative form and style of education in a situation where new ideas and experimentation have too long been absent.

## The Shortage of Navajo Teachers

Of 2,800 teachers on the reservation, only 188 are Navajos.[249] Of the 32,982 Navajos 25 years and older, by 1970, only 4,576 had completed high school, and only 325 had completed college.[250] Of the 32 tribal groups tabulated in the 1970 census, the Navajo were last in median school years completed--5 years. No other group had less than 8 years, and 25 tribal groups had a median of 10 years or more.[251]

Based on the attainment figures for the over 25 age group, four out of every five Navajo students will have dropped out of school before reaching the 12th grade.[252]

Given this stark combination of a high dropout rate and low achievement levels, it is hardly surprising that so few Navajos have become certified teachers. The shortage of Navajo teachers was mentioned repeatedly in the course of the hearing. School administrators want to hire Navajo teachers, students want to be taught by them, and parents wonder why there are so few. Donna Parra, a Navajo parent and a teacher at Gallup-McKinley High School, testified that most of the Indian personnel at the high school worked either in the kitchen or on the custodial staff, and more Navajo teachers were needed:

> ...when you are working with young people and they look up to their teachers as models, it is very important that we have Indian and, specifically

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[249] Interview with Dillon Platero, Navajo Division of Education, Aug. 9, 1973.

[250] Census, PC(2)-1F, Table 11, p. 146.

[251] Ibid., pp. 144-47.

[252] Census, PC(2)-1F, Table 11, p. 146.

> in this area, more Navajo teachers that they can look up to with a positive view—it is disturbing that there aren't more. 253

Ms. Parra was asked whether non-Indian teachers receive a thorough orientation to the Navajo culture so that they are better equipped to understand their students.

> I personally do not feel that our orientation program for new teachers...is adequate. And I base this on my many observations, teaching and working with people who have come from other areas, who are not necessarily insincere. However, they do not know enough, I feel, about the culture of our Indian and also our Chicano youngsters...so that they can, maybe, do a better job. 254

Gallup-McKinley School Superintendent Woodburn commented that the community people had been very helpful in planning the teacher orientation program but added that it was very difficult to do an indepth job in one or two sessions. Asked whether he thought the program was important enough to warrant additional budget allocation, he replied:

> Yes, sir, I do. However, again, we run into the economics and if we can get these kinds of things done, cultural awareness, this sort of thing, other ways, then I think here is a place that we can make an impact on the total educational picture. 255

As more Navajo teachers have become certified in the past few years, competition has grown between public and BIA schools to hire them. The public schools have been at a disadvantage because their salaries are not as high as those offered by the BIA. During the hearing, several school administrators mentioned this as a reason why they had been unable to hire any Navajo teachers.[256] The starting salary for any teacher in the BIA system is $12,167, while a new

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253. Testimony of Donna Parra, p. 224.

254. Ibid.

255. Testimony of A.C. Woodburn, p. 239.

256. See, e.g., Testimony of A.C. Woodburn, pp. 230-31, and Kern Severtson, Superintendent, Kayenta School District, p. 312.

teacher in the Gallup-McKinley County School District starts at $6,700,[257] described by Superintendent Woodburn as about median for New Mexico. The Gallup-McKinley teacher can receive salary increments through a combination of graduate studies and teaching experience. In order to reach $12,000 per year, however, that teacher would either have to have a Ph.D and 10 years' experience (only 5 of which may be outside the Gallup-McKinley system), or a master's degree and 20 years' experience.[258] At these salaries, the New Mexico public school system is hardly competitive with the BIA.

The Acting Assistant Area Director, BIA Navajo Area Division of Education, was asked to comment on the alleged advantage BIA schools have in being able to pay their teachers more. He referred to an Arizona public school system in his reply:

> We've had teachers come that we hired and if they go to, like Chinle, where there is a public school next door, the next day they quit and take a job over there because the salaries are higher. 259

An examination of salary scales for the Chinle public schools, however, failed to substantiate this response.[260]

## Certification: A Giant Hurdle

As with all public school systems, the certification requirements for teachers on the Navajo Reservation are dictated by the State employing the teacher. Arizona, New Mexico, and Utah have each established their own qualifications for certification, based on the number of credits earned in an accredited institution of higher learning. In an economy well below the national poverty level and with a fifth grade median level of education, the road to certification for Navajos is extremely difficult.

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[257] New Mexico public school salaries are based on a 9 month work year, while BIA teachers are on duty for 12 months, which accounts for a fraction of the difference between the two starting salaries.

[258] Financial and Ethnic Data, Gallup-McKinley County School District, Exhibit No. 38, p. 1063.

[259] Testimony of Abraham I. Tucker, p. 383.

[260] The Chinle public schools offer a starting salary of $7,400 (for 9 months' work). Increments in Arizona are based on a combination of graduate credits and/or teaching experience. In order to earn $12,000 per year a Chinle teacher would have to have a master's degree plus 18 hours of graduate credit and 8 years' experience, or a master's degree and 10 years' experience. While slightly higher than New Mexico salaries, Arizona public schools cannot compete with BIA schools on the basis of salary.

While there is no doubt that certification requirements for core subjects such as languages, mathematics, and science should be maintained, there seems little logic in applying the same academic standards to certification of teachers of culture-based subjects. Adherence to strict certification requirements in all classroom subjects on the reservation has frustrated attempts to broaden curriculum to include study areas relevant to the Navajo way of life--Navajo cultural history, the Navajo language, or crafts such as silversmithing or sashbelt weaving. These subjects, in most instances, can best be taught by Navajos who have the experience and knowledge required--the silversmith, the traditional storyteller, the medicine man or woman. None of these is likely to have the requisite educational background to qualify for standard certification. It was suggested at the hearing that the States make allowance for persons with special skills and an ability to convey these skills in the classroom.[261] The problem appears to be an administrative one, which could be solved to the benefit of both the States and the students.

The Navajo Division of Education undertook a teacher certification program using Title IV[262] funds made available to the tribe for teacher training. The program operates entirely on the reservation. Navajo teacher aides who have already earned 60 hours (2 years) of college credit may participate and continue to work at their jobs while taking classes locally 1 day per week. They attend two summer sessions and at the end of 2 years are eligible for certification.[263] Participants in this program must have their school administrator's permission to take 1 day of release time per week to attend classes; and, although at the time of the hearing this had not been a problem in the public schools, there had been complaints that BIA schools were not being so generous about granting release time.[264]

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[261] Testimony of Marjorie Thomas, p. 269.

[262] Indian Education Act, 20 U.S.C. §887c (Supp. 1973).

[263] Staff interview with Dillon Platero, August 9, 1973.

Asked what the BIA policy on release time for Navajo aides had been, Mr. Tucker said the primary problem was having enough staff on hand in the schools to meet the students' needs, particularly since many aides in BIA schools work in the dormitories. The BIA schools were, by his report, short 190 staff positions. Although the BIA was in favor of the teacher training program, each school had been given discretionary authority to grant release time on the basis of need.[265] Out of 460 BIA aides, 30 applied for this training program; 19 were accepted and 15 have been granted release time from BIA schools.[266]

Gallup-McKinley County School District Superintendent Woodburn indicated in his testimony that certification continued to be a problem but that his administration had developed a salary schedule for teacher aides based on experience and college hours, and had consistently urged the Navajo teacher aides to take college classes, either in summer sessions or at one of the local extension facilities.[267]

The Kayenta (Arizona) School District, which had a recent change in administration, has also revamped its teacher aide program. Kern Severtson, the new superintendent, testified that the classroom teaching aides in the Kayenta system work with the students at least 51 percent of the time and should be paid for the work they do.

> ...we have developed a salary scale which is identical in concept to that of our certified staff members, giving an incentive toward more

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[264] Statement of Marjorie Thomas, Exhibit No. 46, p. 1148.

[265] Testimony of Abraham I. Tucker, pp. 374-75.

[266] Data on Training for Teacher Aides, Exhibit No. 55, p. 1266.

[267] Testimony of A.C. Woodburn, p. 231.

> education and more experience and tenure in our district. [The aides] seem to be quite excited about this and feel more professional about it, and, I feel, because of this they will do a better job with the students. 268

Salaries are still a problem, however, especially since the aides are paid for only the 9 months of the school year. Marjorie Thomas, director of the Indian Cultural Curriculum Center in Tuba City, suggested that financial assistance be provided for aides who would like to continue their education during the summer months in preparation for teacher certification:

> ...I hate to see a good aide discouraged by being laid off for the summer months and then maybe she or he had a desire to go on into education and cannot do it because there's no funds. 269

One other aspect of the certification problem that the tribe has been working on involves the setting of uniform standards applicable to all schools on the reservation.[270] While this goal is not yet realized, the three State education agencies have indicated their willingness to cooperate with the Navajo Division of Education in its coordination efforts.[271]

## Parent Involvement

Several witnesses testified that Navajo parents tend not to be involved in their children's education. Most of the reasons given related to the Navajo's feeling of being a stranger in the Anglo educational environment.

A Gallup-McKinley High School student testified that sometimes the school invites parents to visit. But, since there are no

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268. Testimony of Superintendent Kern Severtson, p. 312.

269. Statement of Marjorie Thomas, Exhibit No. 46, p. 1148.

270. Navajo Division of Education, Education Programs for the Navajo Nation, Program 1 (August 1973).

271. Interview with Dillon Platero, August 9, 1973.

interpreters at the school, Navajo parents who cannot speak English feel their visit would be useless.[272]

Navajo parents have consciously separated themselves from a school system that appears to place little value on their contribution. This separation was the subject of testimony given by a parent who supported the change in administration at Window Rock High School.[273] She said that prior to that change:

> ...the school had become a separate kind of institution apart from the community so that the community and the Navajo parents in the community did not feel a part of the school or did not feel welcome in the school. So there was a tendency on the part of the parents, although they were concerned, not to feel...welcome in the school. 274

A member of the Gallup-McKinley school board also expressed concern about the lack of Navajo participation at school board meetings. Board member Abe Plummer told the Commission that a big part of the problem is that Indians have been patronized and made to believe the job will be done for them. Both public and BIA schools have done this— "by outright denial, through intimidation, condescension or...missionary zeal,"[275] characterized by Mr. Plummer as the "we-will-take-care-of-it-all-attitude" of former school officials.[276] The result is that Navajo parents have abdicated all responsibility for the school system to the school personnel. Any change in this routine, Mr. Plummer suggested, will require a fundamental first step:

> ...if we expect parents to participate in educational meetings, school board meetings...they first have to know what education is all about...[we must] get our parents to think education and to understand education. 277

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272. Testimony of Robert Livingston, p. 221.

273. An all-Navajo school board was elected and subsequently hired an Indian superintendent and assistant superintendent.

274. Testimony of Alberta Tippeconnic, p. 320.

275. Testimony of Abe Plummer, p. 232.

276. Ibid., p. 232.

277. Ibid.

Further testimony showed that the Navajo parent is more willing to participate when made to feel welcome and when language is not a barrier. The Indian Cultural Curriculum Center director in Tuba City spoke of her experience in having more parental participation in the bilingual elementary school class than in any other class in the school. Again, Marjorie Thomas stressed the need to make the parents feel important.

> They need to be recognized as important people. ...I take the time off to show the parent around whether he or she wants to or not. I just tell them "Your kid goes to school here. Let's go see the nurse's office; let's go to the library"; ...I even help them get a free meal and I eat with them so they won't feel shy and then I get their opinion on the school lunch, on the classroom where the children are, on the teacher, and they always say that "I wish I was in school now." [278]

Parental involvement in the educational process has been strongly encouraged at the community-controlled schools, with positive results. The push for these schools grew largely out of the desire of Navajo parents to have a voice in decisions on their children's education.

These schools have a true open door policy. The director of Rough Rock School testified that parents and community people were encouraged to visit any time and the result was visitors at the school almost every day.[279] A student from Rough Rock who had previously attended several BIA schools said that neither visits nor suggestions from parents had been welcome at the BIA schools, but that Rough Rock wanted and was better able to work with parents.[280]

When the BIA announced plans to discontinue the elementary school at Borrego Pass in 1970, local parents asked to take over the school. At the time of the Window Rock hearing, the six locally elected school board members were in their second year of administration and were very pleased with the progress Borrego Pass had made.[281]

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[278] Statement of Marjorie Thomas, Exhibit No. 46, p. 1153.

[279] Testimony of Ethelou Yazzie, p. 347.

[280] Testimony of Ruth Todacheeney, p. 346.

A Navajo language teacher from Rock Point School noted that parents not only visited the school, but also participated in teaching some classes and helped out as house parents in the school dormitory.[282]

With the exception of a few communities, the general lack of Navajo parental involvement in school activities is even more pronounced in the context of school board membership. There are still many communities on the reservation where the school boards are controlled by non-Navajos. The San Juan County School District in Utah is one example. The northern half of the county is nonreservation area and the schools there tend to have a majority of non-Navajo students. Both high schools for the district are located in the northern half. One has a fairly equal Indian to non-Indian student ratio; the other high school has only 11 Indian students out of a total of 337. The southern half of the county is reservation land and has only elementary schools in which most of the children are Navajo.[283] The administrative and teaching staffs in the San Juan schools are almost entirely non-Indian.

Two of the five San Juan district board members are Navajo.[284] One of the two, Tulley Lameman, told the Commission he had tried without success to get Navajo parents to participate in board activities. His efforts included talks at chapter meetings to explain what the school board is doing and invitations to Navajo parents to attend meetings in his home. [285]

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[281] 281. Testimony of John Barbone, member of Board of Directors for Borrego Pass community-controlled school, p. 349.

[282] 282. Testimony of Stella Tsinajinnie, p. 348.

[283] 283. Exhibit No. 42, p. 1106. While these schools are almost entirely Navajo, some Ute children also attend.

[284] 284. According to the 1970 census, about half the population of San Juan County is Indian. Census, PC(1)-B46, Table 34, p. 72.

This picture of parental noninvolvment has recently begun to change. But no change could have come about without widespread support from the Navajo community. For the Window Rock community the catalyst was a student protest over curriculum and dress codes. When the students became involved, the parents became involved. The result was election of an all-Navajo school board. Testifying at the hearing, the new president of the board explained why he ran:

> ...we were trying to get parents to get more involved in the school system. We were trying to tell Navajo parents that they had to take a greater role in trying to shape their kids so that they could be valuable...an asset to the Navajo Nation... . 286

But, he added, it will take some time to change something that has been going on for the last 75 years; the process of change will have its agonies and problems, and it will be very hard work. [287] In office just a few months, the new board had hired an Indian superintendent and an Indian administrator and had recruited Indian teachers and community workers. Of these efforts, Mr. Zah said:

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285. Testimony of Tulley Lameman, p. 266. Also expressing concern about the lack of parental participation, the San Juan school superintendent told the Commission that after each board meeting he wrote an article which was sent to both the local radio station and newspaper, to keep the community informed of actions taken by the board. He did not mention whether any information about school operation was sent directly to the parents. Testimony of Kenneth Maughan, p. 266.

However, a parent who teaches in the San Juan school system testified that she never received notice of any school meeting in the mail and had never heard any announcement about school board meetings over the local radio station. Testimony of Arlene Dennison, p. 244.

286. Testimony of Peterson Zah, p. 327.

287. Ibid., p. 327.

> I guess what we were really trying to do was bring the school system closer to the chapter people, closer to the Navajo people, so that they would have a role in how their school is being run... . 288

A community member who worked for the election of the new board was asked if she favored an all-Indian school board and if so, why. She replied that she favored this particular board because all the members were well qualified and also were Navajo. She said that non-Indian board members might see a problem where an Indian board would find none, and it is important that people be aware of this different way of looking at things.

> It's...an Indian way of looking at things, but you can relate to the thinking of children, you can relate to the thinking of students. In this way, yes, I believe that it is important that we do have our school board all Indian. 289

Unlike public school boards, the boards working with BIA schools are purely advisory. These advisory school boards were first authorized by the tribal council in 1969.[290] For the Navajo parent, the difficulty with these boards is not their membership, since they are composed of Navajos, but the fact that the boards lack any decisionmaking authority.

As mentioned earlier, the BIA professes to make no decision concerning the education of Navajo children without the advice and consent of Navajo parents. Since there is an advisory school board for each BIA school, it is reasonable to assume that parental advice might be brought to bear through these boards.

The question of an advisory school board's authority to hire and fire school personnel was posed to the Acting Assistant Area Director, BIA Navajo Area Division of Education. Since BIA school employees

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288. Ibid., p. 327.

289. Testimony of Alberta Tippeconnic, p. 321.

290. Resolution of the Navajo Tribal Council, CAU-87-69 (1969).

come under civil service regulations, Mr. Tucker explained that personnel cannot be terminated by an advisory school board. Pressed on whether an advisory school board has the authority to hire teachers, Mr. Tucker responded that civil service procedures are followed and qualified applications are forwarded to the school principal for review. The principal then consults with the advisory board.[291] Mr. Tucker continued:

> There's more power in being advisory than meets the eye...[the principal will] take the suggestion of the school board because...they are suggesting [from among applicants already qualified]...so, therefore, there's no violation of any civil service regulation, and in order to make the school boards feel that they are contributing to the operation of the school, [the principal] will accept the feelings of the school board and choose that person. 292

Mr. Tucker then confirmed the fact that the boards do not have hiring authority but stressed again that, in practice, the board's advice is followed.

An advisory board member from Tuba City made it clear that in his view these boards have no authority whatsoever. Asked whether the boards have enough power to influence curriculum and employment, Herman Norris said no. Curriculum priorities are set by the BIA and the board acts as a rubber stamp.[293] Job applicants are pre-interviewed and then the board endorses one of several presented to it. Although the endorsee is usually accepted by the principal of the school,[294] there

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291. Testimony of Abraham I. Tucker, pp. 358-60. NOTE: The tribal council recently voted to give the BIA advisory school boards "authority to direct BIA employees" pursuant to 25 U.S.C. §48 (1970), which allows tribal direction of BIA employees. Resolution of the Navajo Tribal Council, CO-67-73 (1973).

292. Testimony of Abraham I. Tucker, pp. 359-60.

293. Testimony of Herman Norris, p. 339. Mr. Norris is also education coordinator for the Navajo Tribe. See also BIA School Board Handbook, 1969.

294. Testimony of Carol Howard, p. 337.

is no assurance that this will be so. Mr. Norris noted that the advisory board handbook states that such boards function only as a recommendation body to the schools. He said he was elected believing he would have some voice in school matters, but that the board members had no power. He now believes that the advisory boards will have no value until they are given authority similar to that of public school boards.[295]

## The Navajo Student

The high student dropout rate, the number of runaways from the BIA boarding schools, and the general disdain for the Anglo system of education on the reservation all point to the conclusion that Navajo children have been more eager to escape the system than to cope with it.

But recently, as Navajos have begun to have a new awareness of their identity, students have begun to seek changes, rather than facing education on a take-it-or-leave-it basis. Many Navajo students feel they have been culturally shortchanged by an educational system that takes so little account of the Navajo heritage and ways of life, and they are taking steps to remedy this.

Within the 1972-73 academic year, four school districts[296] on the Navajo Reservation experienced this student movement firsthand. In three of the four districts, the students took the initial step to promote change. In the fourth, Kayenta, the impetus came from the classified employees (teacher aides, cooks, and busdrivers), who went on strike for better wages and safer working conditions. The Kayenta students supported this strike. Teacher aides voiced student concerns about non-Indian teachers who showed little interest in the "Navajoness" of the children, and the students were concerned that schoolbus conditions were unsafe because the drivers were too tired to drive safely. They drove several hours each way and were not given a decent place to rest during their hours off.[297]

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[295] Testimony of Herman Norris, pp. 340-42.

[296] Tohatchi, Window Rock, Tuba City, and Kayenta.

The strike forced the resignation of the superintendent of the Kayenta schools and the election of an all-Navajo school board, which appointed a new superintendent in early 1972.[298] A non-Indian, the new superintendent agreed with community sentiment that a Navajo superintendent would be preferable.[299] Administration relations with staff and community improved, however, and Superintendent Severtson attempted to broaden the curriculum to include more Navajo studies.[300]

The students at Tohatchi High School organized around their concern for the way Navajo students were treated by the school administration. A student committee drew up a petition stating their grievances and presented it to the local chapters.[301] The chapters supported the students and requested that the Gallup-McKinley County School Board authorize an investigation by a committee from the Tohatchi community. The investigation committee presented its findings and recommendations to the board and requested that the principal and vice principal be replaced.[302]

Many of the committee's findings dealt with the administration's lack of respect for Navajo students. There was a substantial lack of information available to the students about administrative policies and procedures. Tohatchi had never published a student handbook. The

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[297] Testimony of Mary Ann Navajo, p. 292.

[298] Ibid., pp. 295-96.

[299] Testimony of Kern Severtson, p. 311. A Navajo, Mr. Tulley Norris, has been appointed superintendent since the Window Rock hearing.

[300] Ibid., p. 304.

[301] Testimony of Shirley Martin, 1973 graduate of Tohatchi public high school, pp. 221-22.

[302] Testimony of Harry Yazzie, dormitory manager for Tohatchi BIA elementary boarding school, pp. 226-28.

Navajo students had asked if they could have an Indian club under the school's sponsorship. Permission was refused. The administration's reason was that the club had no sponsor, although an assistant counselor had told the students he would sponsor them.[303]

The Tohatchi students also took this opportunity to ask for more bilingual-bicultural programming and for more Navajo professional staff--particularly counselors.[304] With a change in administration, the situation has improved at Tohatchi and the increased interest shown by the students and the community continues to have a positive effect.[305]

Poor communication between administration and students was a factor common to all of the school situations in which the students took action to promote change. It was clear in the Tohatchi situation and was the long term cause for the demonstrations in both Tuba City and Window Rock.

Tuba City students were dissatisfied with a number of administrative practices in their high school: Indian students who cut class were expelled while Anglos who cut were not even reprimanded; students were not permitted to speak Navajo in class; parents were not notified of school meetings; there were not enough Indian teachers, nor were enough Navajo studies offered. On the anniversary of the Navajo "Long Walk"[306] the students decided to sit in at the superintendent's office to bring these problems to the immediate attention of the administration and community.[307]

Student action resulted in improvements at Tuba City High School but not a complete redress of their grievances. While a Navajo studies class is now offered, it is only for high school seniors, and a student from Tuba City testified that she thought Navajo students should have an opportunity to learn about their culture and heritage before they reached their senior year. She also said that the administration is at least trying to consult the students on some issues now, but she is concerned that this is only because the administrators are afraid of another demonstration.[308]

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[303] Testimony of Shirley Martin, p. 221.

[304] Report of Tohatchi High School Investigation Committee to Gallup-McKinley County School Board, April 9, 1973, Item 8.

[305] Testimony of Shirley Martin, p. 222.

[306] See section on Navajo history, above, p. 12.

[307] Interview with Vanessa Brown, senior at the Tuba City High School, July 5, 1973.

Student action in Window Rock High School developed when a football player was suspended from the team on the night of a big game because his hair was too long. The students responded by requesting to be heard on the subject of changing the school dress code. They tried to bring it up at a school board meeting, and they also tried to discuss it with the school administration. When they heard no response from either, they walked out of school. They demanded that something be done about a dress code that prohibited male students from wearing long hair, students from a society whose men have always worn long hair in the traditional "Navajo knot." They also challenged the rationale behind prohibiting long pants for female students in a climate with severe winters.[309]

Taking their lead from the students, a number of parents in the Window Rock community became involved in trying to promote positive change in the Window Rock school system. One parent who speaks only Navajo testified that, while she initially disapproved of the student walk-out as disrespectful of school authority, she was finally convinced that the administration could not be moved to discuss school problems by any ordinary methods. She, therefore, went to a chapter meeting and spoke, as she never had before, about difficulties her children had encountered in Anglo schools and of her support for Navajo students trying to improve their schools.[310]

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[308] Testimony of Vanessa Brown, pp. 268, 273.

[309] Testimony of Verna Etsitty, p. 318.

Because the school board was largely responsible for school policy, many community members wanted to see a change in board membership and worked to accomplish that goal. Within 3 months of the student walkout an election was held and the old board replaced with five new members, all of them Indian. The dress code was changed, a Navajo studies program was instituted, and the board worked hard to recruit not only an Indian superintendent but as many Indian teachers as possible.

Commissioner Ruiz asked whether the all-Indian school board had had any difficulty working with the State departments of education or the Bureau of Indian Affairs, all of which are Anglo controlled. A parent who worked for its election responded that the board had had a very difficult time with some of the county and State officials, but that these officials had to learn to listen to people who are qualified to speak, even if they happen to be Navajo. She spoke for herself and for all Navajos when she expressed how important it is that non-Indians learn to understand her people:

> ...to know that we are equal in education but also equal in the right to make our own mistakes, the right to make wrong decisions, the right to be average. 311

## Funding Indian Education

The United States Government has a unique obligation to provide for the education of Navajo children. That obligation is based on the Treaty of 1868, which states in part:

> In order to insure the civilization of the Indians entering into this treaty, the necessity of education is admitted...and the United States agrees that, for every thirty children...a house shall be provided, and

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310. Testimony of Ms. Slinkey, pp. 319, 320.

311. Testimony of Alberta Tippeconnic, p. 322.

> a teacher competent to teach the elementary branches of an English education shall be furnished... . [312]

The obligation has been reinforced by Federal legislation that provides funds specifically for the education of Indian children, whether they attend BIA or public schools.

The 60 BIA schools on the Navajo Reservation are federally maintained. Funds are channeled through BIA headquarters [313] to the Navajo Area Agency, which has administrative responsibility for all BIA schools within its jurisdiciton. While BIA schools may benefit from other Federal education support, such as Title I funds, [314] these schools do not receive State and local monies.

The public schools Navajo students attend are entitled to receive Federal aid under a variety of laws intended to give the Indian child an equal opportunity to learn. The greatest part of this aid is disbursed through four programs: Johnson-O'Malley, Impact Aid, Title I of the Elementary and Secondary Education Act of 1965, and Title IV of the Education Amendments of 1972.

## Johnson-O'Malley

The Johnson-O'Malley Act of 1934 (JOM) provides benefits for Indians only. In 12 lines of ambiguous text this act authorizes the Secretary of the Interior to contract with any State, school, or private agency for the "education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians." [315] While the wording indicates broad coverage, in practice, JOM funds are used by BIA to finance the education of Indian children in the public school system. [316]

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312. Treaty between the U.S. Government and the Navajo Indians, June 1, 1868, 15 Stat. 669, Article VI.

313. 25 U.S.C. §13, 295 (1970).

314. The Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. §241a *et seq*. (Supp. 1973).

315. 25 U.S.C. §452 (1970).

316. 25 C.F.R. Part 33 (1973).

According to the Federal regulations, the BIA administers the JOM program

> to accommodate unmet financial needs of school districts related to the presence of large blocks of nontaxable Indian-owned property in the district and relatively large numbers of Indian children... which local funds are inadequate to meet. [317]

In effect, the Federal Government is paying the States to educate Indian children by substituting JOM funds for State and local property taxes. These taxes cannot be collected from Navajos because they live on the reservation, which is tax-exempt Federal land.

Until 1958 the JOM program was the only source of financial support for the education of Indian children in the public school system, and as such was used to meet general operating expenses. In that year, Congress made other "in lieu of taxes" monies [318] available for general support of Indian children in public schools. Although this appears to be dual funding, the intent was to limit the use of JOM for general expenses to situations in which a district's funding needs could be met in no other way--as when a district is in such financial straits that schools will be forced to close unless JOM dollars are made available.

The 1957 BIA regulations clearly state that JOM funds may be used for general operating expenses only as a supplement to all other funding sources. [319] Despite the clarity of the regulations, BIA has made no attempt to enforce this restriction on the reservation. [320]

The unwritten intent of the restriction was to allow JOM funds to be spent, whenever possible, on special programs for Indian children. [321]

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[317] 25 C.F.R. §33.4(b) (1973).

[318] 72 Stat. 548, now 20 U.S.C. §237 (1970). See note 341, infra p. 97.

[319] 25 C.F.R. §33.4(c) (1973). This restriction is even more stringent in the recently revised JOM regulations, 39 Fed. Reg. 30114 at Part 33.2 (c) (1974).

[320] Testimony of Myron Jones, Director, Indian Education Training Institute, Albuquerque, New Mexico, pp. 214-15.

[321] See House Comm. on Education and Labor, H.R. Rep. No. 1532, 85th Cong., 2d Sess. 3.

Since this intent is not mentioned in either the BIA regulations or the BIA manual, there is no way to enforce it. Special program funding seems to operate as something of a lax gentlemen's agreement between the BIA and States receiving JOM allocations--an agreement BIA has no actual authority to enforce.

Much criticism has been leveled at districts that do not use their JOM money for special Indian programming,[322] but such criticism has fallen on deaf ears for the obvious reason that special programming is in no way required by either the State or the BIA. Where special programming is nominally in effect, it is difficult to evaluate because there are no guidelines.

The BIA regulations governing JOM fund distribution require that each State submit, for BIA approval, a plan outlining fund allocation among its school districts.[323] At this point in the process BIA, through its authority to approve or disapprove the State plan, could exercise some guidance by establishing special programming requirements that a local school district must meet to qualify for JOM assistance.

A reading of the State plans for Arizona and New Mexico shows little comparability between the two and indicates that BIA has no uniform policy on special programming for Navajo students. The New Mexico plan states that JOM funds are to be used "to meet the special and unique needs of eligible Indian children."[324] This means that all general operating expenses and minimum standard requirements will be met out of other funding sources and that JOM dollars will be spent only on special programming for Indian students.

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322. For detailed discussion of problems related to Federal aid to Indian education, see generally: NAACP Legal Defense and Education Fund, Inc., An Even Chance (1971); Center for Law and Education, Harvard University, No. 7, Inequality in Education; Hearings on Policy, Organization, Administration and New Legislation Concerning the American Indians Before the Subcomm. on Indian Education of the Senate Comm. on Labor and Public Welfare, 91st Cong., 1st Sess., pt. 1 & 2 (1969).

323. 25 C.F.R. §33.5(a) (1973). The 1974 revised regulations require that a plan be submitted by the contractor.

324. Proposed New Mexico State Plan for the Administration and Programming of Johnson-O'Malley Funds at 1 (1972), Exhibit No. 34.

The Arizona plan emphasizes the straight financial need of a school district and allows JOM funds to be used to cover general operating expenses where the cost of educating the eligible Indian children is greater than the district's revenues.[325] Although the plan states that its special program provisions are intended to develop "school programs responsive to the needs of Indian children," its wording limits special programming to special services, which are defined as:

> ...the cost of school lunches when neither the family nor the school district can meet or absorb the cost. It is recognized that the cost of providing special teachers, unusual transportation, or other school employees may be paid from this fund. 326

Both State plans require that school districts make an effort to meet their costs first out of all other revenues, including tax revenues, before they can become eligible for JOM funds. This requirement is based on the theory that JOM funds should not be expended where other dollars are available.

Comparative figures for JOM programs in Arizona and New Mexico were presented at the hearing by the director of the Indian Education Training Institute, Dr. Myron Jones, who testified that all New Mexico districts with Navajo students receive JOM funding. According to the Institute's research, one New Mexico school district had a budget surplus, not counting JOM, for 5 consecutive years, which by June 1972 totalled $2.4 million. It had, accordingly, the lowest tax levy in the State. This same district, despite its surplus and despite its minimal tax levy, had received JOM funding with Bureau approval for each of those 5 years,[327] up to the time of the hearing.

In contrast to New Mexico, there were three districts in Arizona with Navajo students that received no JOM funding. Arizona requires

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325. Arizona Johnson-O'Malley Plan at 2 (1969), Exhibit No. 34.

326. Arizona Johnson-O'Malley Plan at 3, Exhibit No. 34.

327. Testimony of Dr. Myron Jones, pp. 213, 214-15.

that in order to be eligible for JOM funds, a district must meet the current State tax average. These districts were unable to do so and were, therefore, ineligible. While some Arizona districts get no JOM money, others spend it in a manner reflecting the State plan; out of the $3.8 million in JOM funds given to Arizona, only $10,000 was spent on special programming for Indian students.[328]

Dr. Jones placed much of the responsibility for inappropriate use of JOM funds on the BIA. He testified that to the best of his knowledge the Navajo Area Office at Window Rock had never assigned even one individual to monitor Federal aid to public education, although some $8 million in Johnson-O'Malley aid is channeled through that office.[329] Dr. Jones also charged that the Navajo Area Office is particularly remiss when compared with other area offices, which:

> with one-quarter the funds that exist in this area...have delegated staffs of up to five people...to monitor, oversee, and develop programs...for Federal funds in public schools. 330

The JOM regulations had been in effect, without change, since they were issued by the BIA in 1958. In the past few years, however, Federal aid to Indian education has come under close scrutiny,[331] leading to a BIA decision to revise its JOM regulations. After at least 2 years of work, the proposed revisions were published for comment January 2, 1974.[332] Using the comments and suggestions submitted in response to the proposed revisions, the BIA published finally revised JOM regulations on August 21, 1974.[333]

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328. Ibid., p. 213, 215.

329. Testimony of Dr. Myron Jones, p. 213.

330. Ibid., p. 216.

331. See note 322, above, p. 91.

332. 39 Fed. Reg. 1776 (1974).

333. 39 Fed. Reg. 30114 (1974).

The need to revise the JOM regulations became obvious with passage of the Indian Education Act [334] in 1972. Funds provided under the act are administered by the Office of Education, and it was immediately recognized that coordination between that office and the BIA was necessary to avoid duplication. Dr. Jones commented in his testimony on the regulation writing phase of this coordination:

> A year ago when the Indian Education Act was passed, the Office of Management and Budget requested the Bureau of Indian Affairs to create new regulations for Johnson-O'Malley that would dovetail with pending regulations for the Indian Education Act. Now, one year later, the regulations for the Indian Education Act have been written, published, and are in effect and the proposed changes in Bureau regulations are still in the talking stage. [335]

The finally revised JOM regulations address the problem of special programming and Indian participation in the funding process. Under the new regulations priority will be given to expenditures for special programming, and a State plan must give preference to special programming over operational funding. Use of JOM money for operational funding will also be much more restricted than it now is by limiting that use to districts or schools with at least 70 percent Indian enrollment. Indian education committees selected by the Indian community served are an innovation in the regulations; they will be given absolute approval authority over the special programming aspects of JOM applications from their districts. These committees may also choose to assume monitoring and evaluation responsibility for the spending of special program funds. [336]

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[334] 20 U.S.C. §241aa-ff, 880b-3a, 1119a, 1121a and 1121f-h (Supp. 1973).

[335] Testimony of Dr. Myron Jones, p. 215.

[336] Telephone interview with Brice Lay, Chief, Division of Education Assistance, BIA, May 17, 1974. See 39 Fed. Reg. 30114-6 (1974). NOTE: The recently passed Indian Education Assistance Act (further amending the Johnson-O'Malley Act of 1934) is even more stringent in its

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Much of the duplicative administration involved in JOM funding has been significantly reduced in the past few years. Until 1973, JOM funds for Arizona went through the BIA Phoenix Area Office to the State department of education, while New Mexico's JOM funds reached the State through the Navajo Area Office in Window Rock. San Juan County, which covers all of the Utah portion of the reservation, received its JOM dollars directly from the Navajo Area Office, with no State involvement. In June 1973, the BIA streamlined the funding process by giving the Navajo Area Office responsibility for letting both the New Mexico and Arizona JOM contracts; however, monitoring responsibilities were still divided between the Phoenix and Window Rock offices.

On October 24, 1973, the Navajo Tribal Council passed a resolution directing the Navajo Tribe to replace the States of Arizona and New Mexico, and San Juan County, Utah, as the party contracting with the BIA for all JOM funding, programming, and monitoring on the reservation. The Navajo Tribal Division of Education now has monitoring responsibilities for the JOM programs in all three States.[337]

Tribal assumption of responsibility for JOM programming is a first step toward Navajo control of education on the reservation. It has been perhaps more easily accomplished structurally because of the special relationship between the program administrator (the BIA) and the program recipients (the Navajo). Other Federal programs providing support for

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(N. 336 continued)

requirements for parental approval of programs for Indian students in public school; where a school board does not have an Indian majority, Indian parents "shall elect a local committee from among their number... [which] shall have the authority to approve or disapprove programs to be conducted under" JOM contract. This act also required that money spent under such contracts "shall be prorated to cover the participation of only the Indian students." Pub. L. 93-638, §202 (Jan. 4, 1975).

[337] Resolution No. CO-64-73, Requesting the Bureau of Indian Affairs to Contract the Johnson-O'Malley Funds for Navajo Children in Public Schools in the States of Arizona, New Mexico, and Utah to the Navajo Tribe; Class "C" Resolution, No BIA Action Required (1973), Exhibit No. 62, p. 1338.

Indian education are neither primarily Indian oriented nor BIA administered. Navajo control of the administration of other Federal funds used by public schools on the reservation, therefore, will require more than an agreement between the Navajo Tribe and the BIA.

## Impact Aid

The two Impact Aid laws--Public Law 874 [338] and Public Law 815[339]--were passed by Congress in 1950 to provide Federal financial assistance to compensate public school systems for the loss of part of their tax base when Federal installations were established in the school district.

P. L. 815 provides funds for school construction, but appropriations have been limited since 1967. From 1967 to 1970, there was no 815 funding of Indian school construction because of a congressionally-imposed priority on fund allocation that placed schools on military bases and schools hit by natural disasters ahead of Indian schools. In 1970, Congress gave Indian schools "equal priority" for 815 funding, but appropriations have been so limited that little money has been available for Indian school construction. [340]

P. L. 874 funds provide general operating expenses to school districts in lieu of taxes, which would be collected from district residents but for Federal lands within the school district.

Although Indian reservations have always been considered Federal land, Indians were originally excluded from coverage under P. L. 874 at the request of the States because of fear that school districts would lose JOM funds if they received 874 funds. In 1958 Congress passed amending legislation[341] that permitted dual JOM and 874 funding--874 to provide general operating funds in lieu of taxes and JOM to support special programming for Indian students.

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[338] 20 U.S.C. §236-241 (1950).

[339] 20 U.S.C. §631 et seq. (1950).

[340] The newly passed Indian Education Assistance Act authorizes the appropriation of $35 million per year for the next 5 years for school construction (including site acquisition and renovation of facilities) on or near Indian reservations. Pub. L. 93-638, §204 (Jan. 4, 1975).

In spite of the intention that JOM funds be spent for special programs, little attempt has been made to enforce that intention on the Navajo Reservation. In fact, many school districts use both JOM and 874 funds for the same purpose: to support general operating expenses for the school district.

Much has been made of the argument that the location of Federal Indian land within a school district decreases the amount of revenue available for that district's budget--that somehow the district is poorer for the nontaxable status of reservation land. A detailed look at the funding formula for 874 monies, however, belies this argument.

P L. 874 funding is based on the average daily attendance of eligible Indian students multiplied by a dollar figure, which is arrived at by computing how much is spent per child throughout the school district.[342] It would appear from this formula that a district is reimbursed on a dollar for dollar basis, according to what is spent on each child. However, additional language in P. L. 874 establishes a minimum per student rate of not less than (1) half of the statewide per pupil expenditure, or (2) half the national per pupil expenditure, not to exceed the total State per pupil expenditure.[343] Thus, a school district with a per pupil cost lower than either of the two minimum levels will receive more 874 reimbursement per "Federal" student than it collects per non-"Federal" student through local revenue.

In his testimony Dr. Jones addressed the mistaken belief that districts are handicapped by having to support Navajo students.

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[341] Pub. Law 85-620 (1958) amending 20 U.S.C. §238 (1950).

[342] 20 U.S.C. §238(c)(1) (1970).

[343] 20 U.S.C. §238(d) (1970).

> One of the great myths of public school education for Indians has been that somehow--somehow Indian students, or the presence of Indian land, creates a burden for a school district and for taxpayers. In fact the opposite is true. There is no school district within either New Mexico or Arizona where the district does not make more from Public Law 874 supporting Indian students than from comparable local taxes...in fact, the presence of Indian land and the numbers of Indian students are essential to the financial functioning of the school district. [344]

Administered by the Office of Education, 874 program funds go directly to the school districts applying for them. There is no State involvement and practically no restriction on how these funds are spent. Under the legislation, the Commissioner of Education has no power to demand that the money granted be spent on special programs or curriculum changes to benefit Indian students and, consequently, no monitoring control exists. If, in fact, a district is receiving more dollars per Indian pupil than it is for non-Indians, it might be asked whether Indian students are receiving their fair share of the dollars they bring into their district.

## Title I

The Elementary and Secondary Education Act of 1965 has been the major Federal aid program to recognize the special needs of economically and educationally deprived schoolchildren.[345] Title I[346] provides financial assistance so that local school districts can offer supplemental educational services to students whose family income is below the poverty level ($4,000 per year for fiscal year 1973).[347]

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[344] Testimony of Dr. Myron Jones, p. 211.

[345] 20 U.S.C. §241a *et seq.* (1970).

[346] *Id.*

[347] 20 U.S.C. §241c(c) (1970).

Since the median family income for the Navajo Tribe was only $4,608 [348] in 1970, and 60 percent of the tribe (56,426 people) [349] had incomes below the poverty level, any public school on or near the reservation is likely to qualify for Title I assistance.

BIA schools receive funds under a special provision of the Title I legislation. [350] By agreement between the Office of Education and the Department of the Interior, Title I allocations are channeled through Interior directly to each BIA school making application.

The Office of Education, which administers Title I funds, allocates lump sums to State departments of education. The States, in turn, fund programs proposed by local districts for educationally disadvantaged children. The programs must conform to regulations established by the Office of Education. [351] Title I funds are not to be used to cover general operating expenses of a school district. [352] The major requirements to be met by a district are identification of eligible students' (Navajo) needs, a program to meet those special needs, and an evaluation system to measure the program's effectiveness.

While the district is supposed to monitor its own program, each State also has monitoring, auditing, and evaluation responsibility for the Title I programs. Finally, the Office of Education, because it must report to Congress on the effectiveness of this program, does its own evaluation, although there is rarely more than one staff person in any regional office assigned to this task.

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348. Census, PC(2)-1F, Table 14 at 176.

349. Census, PC(2)-1F, Table 11 at 146. NOTE: Census gives a total Navajo population of 96,743; the Navajo Tribe gives a figure of 120,000. Using the tribal count, 72,000 Navajos had incomes below the poverty level.

350. 20 U.S.C. §241c (1970).

351. 45 C.F.R. §116.1 *et seq.* (1973).

352. 45 C.F.R. §116.17(g) (1973).

The problems are built in. States and districts that want Title I funding are disinclined to be very critical of their own Title I programs. The Office of Education has a limited staff capability for monitoring on a nationwide basis. The abuses of purpose in this program have been documented again and again [353]--not only in relation to Indian children but in school districts across the Nation. The Navajos have perhaps an easier argument to make because so many of the public schools they attend have an almost 100 percent Navajo student body. It is not difficult, therefore, to document whether Title I funds are being spent in these schools to meet "special Indian needs." One of the major studies of misuse of Federal funds for Indian education, using eight States with large Indian populations (including the Navajo area) as a data base, came to this conclusion:

> Where Indian children attend school, Title I is spent on the wrong children, in the wrong schools, on programs which are not supplemental and which do not meet the special needs of Indian children. 354

This conclusion is supported by the finding in a case [355] recently decided in New Mexico. The Gallup-McKinley County School District was charged with violation of both Title I and JOM regulations by a group of plaintiffs who were mainly parents of Navajo schoolchildren. The Federal district court found that the school district was spending a disproportionate amount of local money for physical improvements in the predominantly non-Indian Gallup schools, while not spending enough on outlying schools in McKinley County that are predominantly Indian.

The school district had also misused the Title I and JOM funds in other areas: for the school nurse program; for student counselors; for administrative personnel; and for audiovisual programs. In short,

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353. See note 322 supra, p. 91.

354. NAACP Legal Defense and Education Fund, Inc., An Even Chance (1971).

355. Natonabah v. Board of Education of the Gallup-McKinley County School District, 355 F. Supp. 716 (D. N.M. 1973) (hereinafter cited as Natonabah).

Title I monies were being used to benefit the general school population, rather than to provide educational programming for the Indian children whom Title I is meant to benefit.

Asked what had been done by the Gallup-McKinley County Board of Education to correct the violations found by the court, Superintendent Woodburn replied that equipment purchased with Title I funds for placement in ineligible schools had been removed.[356] He also noted that the district was ordered to submit to the court a plan for correction of the violations. The first plan submitted was rejected. A second plan was submitted in early 1974 and finally approved by the court on July 26, 1974. The Gallup-McKinley Board of Education is now under court order to implement the corrective measures outlined in the approved plan.

Misuse of Title I funds was referred to in some detail by Jack Hennessy, a witness from the San Juan County schools. His recital of abuses was similar to those found in Gallup-McKinley County. The southern half of the county is on the Navajo Reservation and the schools are predominantly Indian attended; most students in the northern half are Anglo. Mr. Hennessy stated that not only are there qualitative differences between the schools in the northern and southern portions, but that the physical differences are glaring.[357]

Even where the school district makes some attempt to provide somewhat similar physical equipment, Title I pays for the equipment in the south, while it is purchased out of general funds in the north. At issue are such things as audiovisual equipment, sports equipment, cabinets, and butcher-paper dispensers.[358]

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[356] Testimony of A.C. Woodburn, p. 230.

[357] Statement of Jack Hennessy, Utah education specialist for DNA, submitted as supplement to oral testimony, Exhibit No. 66.

[358] Ibid.

Salaries for librarians and music teachers are paid with Title I funds in the south; in the north these salaries are met out of general funds. In the north, health and physical education are paid for out of general funds; in the south, Title I pays for these services, which can hardly be defined as special programs even if Indians are the recipients.[359]

The Title I regulations are clear in their intent that parents of students eligible for benefits under the act should be kept informed about, and asked to contribute to, the program planning and application process.[360] Each school district applying for Title I funding is required to have a parent advisory council whose members are to be representative of the target population.

Although the letter of the law is observed, and all districts receiving Title I money do have parent advisory councils, their membership does not always reflect community opinion. Mr. Hennessy testified that the San Juan district parents' committee was Indian, but he felt that, because the committee chairman and vice chairman are school district employees, the committee is dominated by the school district.[361]

Again, the problem of Indian participation is a difficult one. While the schools and the aid programs remain in the control of non-Indians it will be hard to convince the Navajos that their suggestions and ideas will be heeded. With Navajo control of these programs and institutions will come an increased interest on the part of the individual Navajo to participate and voice an opinion.

## Title IV

A recent Federal program to aid Indian students is the Indian Education Act of 1972 (Title IV of the Education Amendments of 1972, known in its drafting stages as the Kennedy-Mondale bill).[362] Title IV provides Federal aid directly to local school districts and to tribal educational institutions for meeting the "special educational needs" of Indian children and adults and for training teachers to aid in Indian education.[363] But, unlike the programs discussed above, this act makes specific provisions for Indian community participation in the planning, operation, and evaluation of Title IV programs. It also sets up a separate division in the Office of Education to supervise this and other Indian education programs, with the aid of an advisory council made up of Indians from across the United States.[364]

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[359] Ibid.

[360] 45 C.F.R. §116.17(o) (1973).

[361] Exhibit No. 66.

Title IV money is supposed to be spent on two types of projects: one for planning and developing new educational programs to meet Indian students' special needs, and the other for establishing and maintaining permanent programs for Indian education, including the acquisition of equipment and facilities.[365]

A local school district must evaluate its programs annually, set up controls to ensure that Title IV grants are not used to supplant available local and State funds, and provide for accounting and fiscal controls over expenditures.[366]

Some of these controls are similar to those written into Title I, P. L. 874, and JOM statutes and regulations. Fiscal and accounting controls, however, are new. But the most significant difference between Title IV and previous Indian education legislation is that Title IV requires that local programs be developed in open consultation with the parents and teachers of the children eligible for Title IV assistance. A committee selected by the community, of which half must be parents of participating students, has absolute authority to approve or disapprove the local program.[367] In theory, then, the program is subject to considerable local control.

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[362] Pub. L. 92-318, 20 U.S.C. §§241aa-ff, 880b-3a, 887c, 1119a and 1221f-h (Supp. 1973).

[363] Id.

[364] 20 U.S.C. §§1221f, g (Supp. 1973).

[365] 20 U.S.C. §241cc (Supp. 1973).

[366] 20 U.S.C. §241dd(a)(4)-(6) (Supp. 1973).

The Indian Education Act also provides for establishment of pilot programs to improve education for Indian schoolchildren, including projects to train teachers in the skills needed to meet their special needs.[368] The Commissioner of Education may not approve any money for a pilot program unless satisfied that the parents, teachers, and other representatives of the community have given final approval to the program and will have adequate opportunity to take part in its operation and evaluation.[369]

Title IV also encourages improvement in Indian adult education. It provides funds for testing the viability of literacy programs and high school equivalency teaching methods currently in use,[370] as well as money to assess the extent of adult illiteracy and the lack of high school education in the Indian community.[371]

Despite census data indicating that the Navajo adult has a low educational achievement level (as measured by the number of grades completed),[372] prior to 1972, none of the Federal aid to Indian education programs specifically included funds for adult education.

Approximately $18 million was appropriated for Title IV in fiscal year 1973, and $30 million each for fiscal years 1974 and 1975,[373] but no useful assessment of Title IV's effectiveness has yet been made.

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[367] 20 U.S.C. §241dd(b) (Supp. 1973).

[368] 20 U.S.C. §887c (Supp. 1973).

[369] 20 U.S.C. §887c(f) (Supp. 1973).

[370] 20 U.S.C. §1211a (Supp. 1973).

[371] 20 U.S.C. §1211a(a)(4) (Supp. 1972).

[372] Of those 25 years or older, less than 19 percent had completed high school in 1970. Census, PC(2)-1F, Table 11, p. 146.

[373] Letter from T.H. Bell, U.S. Commissioner of Education, to John A. Buggs, Staff Director, USCCR, Feb. 27, 1975.

Title IV contains some features that should prevent abuses such as those that occurred under Title I and JOM. Besides requiring Indian participation in the projects at the local level, Title IV provides for Indian participation at the top level within the Office of Education. An Office of Indian Education was established to administer the act. This office is headed by a Deputy Commissioner of Education, selected from a list of names submitted by the National Advisory Council on Indian Education.[374]

The Council created by this legislation consists of 15 Presidential appointees who must be Indian or Alaskan natives and representatives of the entire Native American community.[375] The Council has responsibility for advising the Commissioner on the administration of Title IV programs, including the establishment of regulations, review of funding, evaluation of all Indian education projects, and submission of annual reports to Congress.[376]

It will be the Commissioner's responsibility, aided by the Council on Indian Education, to assure that the Indian community has a genuine role in formulating, supervising, and evaluating Title IV programs at the local levels.[377]

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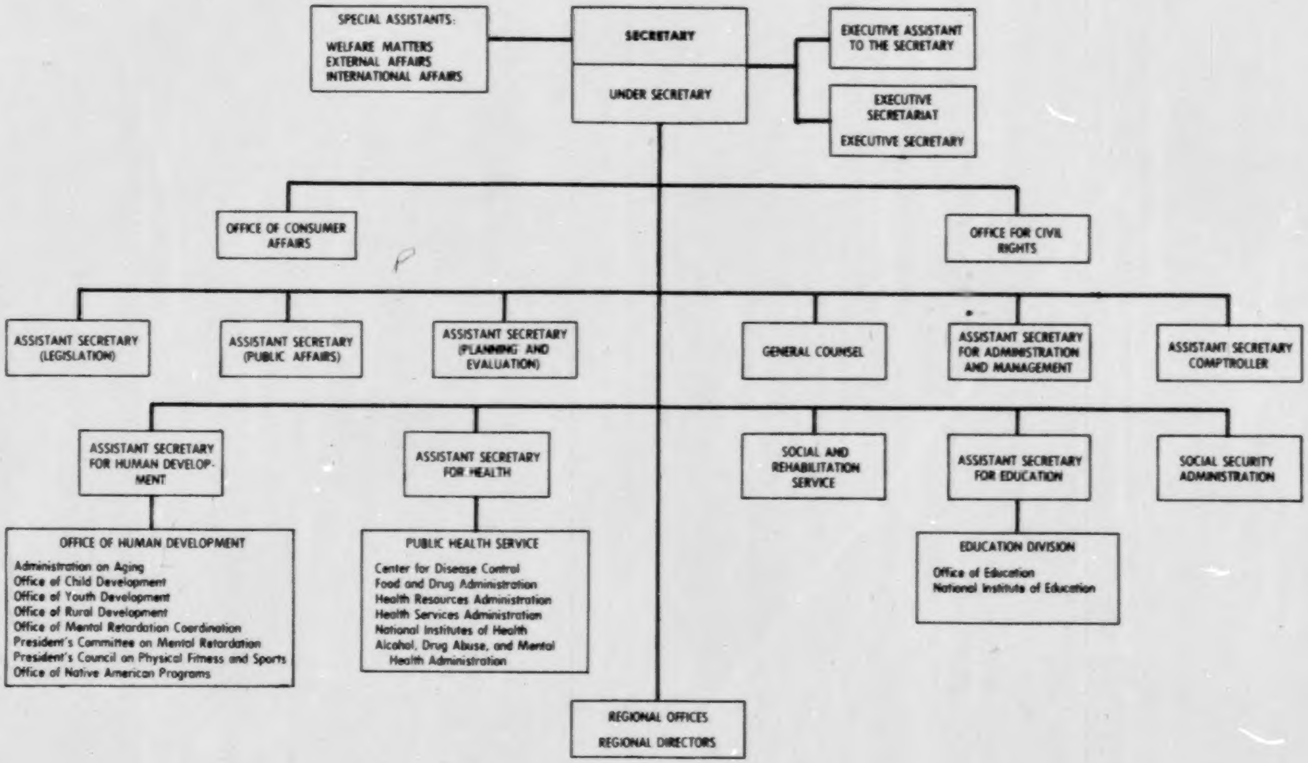
[374] 20 U.S.C. §1221f (Supp. 1973). Dr. William G. Demmert, Jr., a Tlingit/Sioux, was appointed Deputy Commissioner of Education.

[375] 20 U.S.C. §1221g (Supp. 1973).

[376] Id.

[377] The Office of Education concurs with the conclusion in the report that there exists a need for better coordination of Federal programs which provide educational services to Indian people and for tighter monitoring controls on such programs. In an effort to alleviate this problem the Office of Indian Education, USOE, is in the process of defining long and short range goals which include a clarification of administrative responsibilities between USOE and the Bureau of Indian Affairs, and the development of a comprehensive educational plan that will provide a better delivery of services under existing authorities (Pub. L. 874, 815, Title I, Title IV, JOM) to Indian people. Letter from T.H. Bell, U.S. Commissioner of Education, to John A. Buggs, Staff Director, USCCR, Feb. 27. 1975.

FIGURE 4.



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

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EDUCATION DIVISION
Office of Education
National Institute of Education
REGIONAL OFFICES
REGIONAL DIRECTORS

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# 5. HEALTH CARE

"To provide the people served by the Navajo Indian Health Service with the highest quality health services possible within available resources..."

—Goal of the Navajo Area IHS

"A number of tragic events have occurred simply because we have not had the nursing personnel to adequately staff the hospital... We have documented about three cases where infants...have died because there was nobody to take care of them."

—Dr. Taylor McKenzie, IHS Surgeon [378]

The average life expectancy among the Navajo is 63.2 years, about 7 years less than the general U.S. population.[379] The infant mortality rate among the tribe is more than double the U.S. rate;[380] and for infants 1 through 11 months of age who return to their home environment after hospital birth, the death rate is about three times that of infants in the general population.[381] Poor nutrition, lack of basic sanitary facilities, the effects of poverty, cultural clash, geographic isolation, unemployment, and lack of education are the obvious foundations for these bleak statistics. But another factor, well documented at the Window Rock hearing, is that throughout the Navajo's life, from the very hour of birth, the health care delivered under law by the Federal Government is not only inadequate, it is unsafe.

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378. Testimony of Dr. McKenzie, p. 192.

379. *See* Table 4, p. 106.

380. *Ibid.*

381. *Navajo Ten Year Plan*, Exhibit No. 4, p. 518.

This conclusion is not the criticism of outside observers. It is the frank admission of the people who deliver those health services--the doctors, nurses, and administrators of the Indian Health Service (IHS) for the Navajo Area. At the hearing a panel of IHS personnel described from firsthand experience the frustrations--and the deadly dangers--of an inadequate health care program.

## An Inadequate Staff

The IHS operates six hospitals in the Navajo Area.[382] All are critically understaffed. The areawide ratio of IHS hospital staff to patients averages 1.6 to 1,[383] as opposed to a national acceptable average of 2.8 to 1.[384] Many American hospitals have a ratio of three staff members to each patient.[385] The Navajo facilities, in short, fail by almost 50 percent to meet national standards for adequate patient care. That failure in itself, in several instances, has been the documented cause of needless loss of life--including that of a

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382. By treaty, statute, and administrative regulation, reservation Indians are entitled to free, comprehensive medical care. The Indian Health Service (IHS) was established July 1, 1955, when responsibility for the maintenance and operation of hospital and health facilities for Indians, and for the conservation of Indian health, was transferred from the Department of the Interior, Bureau of Indian Affairs, to the U.S. Public Health Service, which operates under the supervision of the Secretary of Health, Education, and Welfare. 42 U.S.C. §2001(a) (Supp. 1973). Three IHS hospitals are on the reservation, in Shiprock, Tuba City, and Ft. Defiance; the others are in Gallup and Crownpoint, New Mexico, and Winslow, Arizona. The IHS also operates nine health centers, eight school health centers, and 18 health clinics in the remote areas of the reservation.

383. Testimony of Dr. George Bock, Medical Director of Navajo Area IHS, p. 197.

384. This is the 1973 average for non-Federal, short term, general, and other special (e.g., orthopedic and children's) hospitals (profit and nonprofit). American Hospital Association, Hospital Statistics (1974 ed.), p. 20.

385. Testimony of Dr. Bock, p. 197.

healthy newborn baby who choked to death on his milk in an unattended nursery.[386]

At Shiprock, which is typical of the IHS hospitals, a 1969 study showed that 90 nurses were needed for proper staffing.[387] Despite this documented need, in fiscal year 1974 the hospital still had only 56 nursing positions. Director of Nurses Beverly Smith told the Commission that, as a result of this shortage, the nursing staff feels it is "giving inadequate care, not even safe care."[388] Ms. Smith cited as an example the obstetrics unit, which has 12 beds for women who have delivered babies, 12 bassinets, and four isolettes for premature infants. Each 8-hour shift on that unit typically consists of two nurses--a registered nurse assigned to the new mothers and a licensed practical nurse (LPN) assigned to the nursery.[389]

National standards state that, for a high risk or premature baby, the nurse to baby ratio should be 1 to 1.[390] According to Ms. Smith, "our ratio has been as high as one LPN to 18 babies, 8 of them being prematures."[391] Even worse, the babies at Shiprock very frequently are left unattended.[392] When there is a delivery, the one LPN in the obstetrics unit must assist in the delivery room, leaving the newborn and premature nursery unstaffed. Ms. Smith told the Commission that this is just one example of situations occurring in all the units because there are inadequacies in all.[393]

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386. Testimony of Dr. Taylor McKenzie, p. 192.

387. Testimony of Beverly Smith, pp. 190-91. The study was conducted by the Commission on Administrative Services in Hospitals (CASH), whose standards for hospital staffing are accepted nationally.

388. Ibid., p. 191.

389. Ibid., pp. 191-92.

390. American Academy of Pediatricians, Standards and Recommendations for Hospital Care of Newborn Infants (Rev. 1974), p. 71.

391. Testimony of Beverly Smith, p. 191.

392. Ibid., p. 192.

393. Ibid.

Dr. Taylor McKenzie, Chief of Surgery at the Shiprock Indian Hospital, had more to say about the seriousness of the situation there.[394] Three babies, he testified, are known to have died in the unit due to inadequate monitoring. One of these infants, lying on its back with a bottle propped up to its mouth, aspirated--that is, inhaled the liquid--and died before it was noticed. Because of the shortage of personnel, babies are fed with a bottle propped in their mouths and left alone.[395]

In another case, a patient with a fractured skull was receiving fluid intravenously on a stretcher in a hospital hallway. Unattended, he fell to the floor, pulling the intravenous setup with him. His death, as a result of this accident, Dr. McKenzie testified, was directly attributable to inadequate nursing coverage.[396] It was also, he added, "inexcusable."[397]

The nursing shortage is not limited to the Shiprock Hospital. The study completed in 1969 covered all six Navajo Area IHS hospitals and showed a total deficit of 273 nurses.[398]

Dr. George Bock, Medical Director of the Navajo Area IHS at the time of the Window Rock hearing, explained to the Commission that for a time IHS staffing tried to keep pace with the growing numbers of Navajos seeking hospital care. When the IHS first took over the area from the BIA in 1955, staffing was "unbelievably terrible," with a mere 436 employees, compared with the current personnel figure of about 1,500.[399] At that time, the staff included only 7 doctors and 1 dentist, compared with today's total of 108 doctors and 46 dentists.[400]

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[394] Dr. McKenzie is the only Navajo physician on the reservation. Only one other Navajo is known to have completed medical school.

[395] Testimony of Dr. McKenzie, p. 192.

[396] Ibid., p. 192.

[397] Ibid.

[398] Testimony of Dr. Bock, p. 193.

[399] Ibid., p. 198.

[400] Ibid.

In the last few years, "staffing has plateaued off, but the increase in outpatients and admissions has gone up."[401]

The current staff, according to the panel, has tried to stem the developing crisis at considerable personal sacrifice. Dr. Bock told the Commission:

> . . . we have nurses that work two shifts. We have physicians that work 18 hours a day. We have many of our professionals that put in almost a 16- to 18-hour day every day to meet this deficit. 402

The "frustrating part," Dr. Bock continued, is that trained people are available to augment the overburdened staff, but the IHS budget has proved an insurmountable obstacle.[403]

## The Budget: Too Small and Too Rigid

The IHS itself has trained an abundance of people to fill medical and paramedical positions, but the Navajo Area budget has consistently failed to provide the slots--the allocations for hiring more personnel. As described by Dr. Bock, who was responsible for submitting the Navajo Area's annual budget requests to Washington, the result has been inefficiency as well as frustration.

For example, Dr. Bock told the Commission that, in 1972, 15 Indian medics completed 2 years of training. "We were supposed to get 15 new positions in our budget to hire these people. We did not get these positions so we had to hire them with vacated positions, lapsed positions that we had in the area."[404]

In his fiscal year 1974 budget, Dr. Bock had documented the need for 166 new positions in hospitals and 179.5 in field health. He told the Commission, "We got none of them."[405]

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401. Ibid.

402. Ibid.

403. Ibid., p. 199.

404. Ibid.

405. Ibid.

IHS budget requests are addressed to the Health Services Administration of the Department of Health, Education, and Welfare in Washington. In fiscal year 1973, Congress, "in its knowledge of our problem," as Dr. Bock put it, added $2.208 million to the IHS budget, but the President's Office of Management and Budget refused to allocate the funds until June 13, a few days before the end of that fiscal year. Since the appropriation was nonrecurring, the money was not available for the next year's base.[406]

In the meantime, as Shiprock's Director of Nursing told the Commission, trained nurse's aides and LPN's--the type of personnel needed for such jobs as monitoring premature babies--were waiting to be hired.[407] The countdown on the fiscal year in Washington was a countdown of life on the Navajo Reservation.

Dr. Bock told the Commission he appealed to HEW about six times a year for more help for the Navajo Area[408] Only once in his 11 years on the reservation, he testified, had an HSA administrator ever visited the area and that was the then current administrator, Harold Buzzell.

> And he was very impressed with the program and made a commitment that his first priority would be to get us the kinds of support that we need. And as I say, this was a new experience for us. 409

In the supporting data that accompanied his fiscal year 1974 budget request, Dr. Bock pointed out that, despite an inpatient and admission workload equaling 24 percent of total IHS figures, and a hospital outpatient workload equaling 23 percent, the Navajo Area receives only 14 percent of IHS resources for direct patient care.[410]

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406. Ibid. The Navajo Area has suffered a shortfall of some $1 million in its base budget over the last 3-year period.

407. Testimony of Beverly Smith, p. 200.

408. Testimony of Dr. Bock, p. 200.

409. Ibid., p. 202. Assistant Secretary for Health, Dr. Charles Edwards, later visited the Navajo Reservation on Jan. 8-9, 1974.

410. Navajo Area Indian Health Service, Information and Data Supporting F.Y. 1974 Indian Health Service Budget, December 1972, p. 5 (hereinafter cited as FY 1974 Budget Request).

Aside from this, however, the irony of the Navajo Area's budget problems is that HEW's rigid maintenance of inadequate staff position ceilings and the executive branch's impounding of appropriated funds have caused waste and inefficiency in most of the other budget categories, including utilization of beds, expenditure of contract medical care (CMC) funds, and training programs.

## Training: But No Jobs

The Navajo Area training programs graduate two social worker associates every 1 to 2 years, as well as nutrition, laboratory, X-ray, and other technicians and community health medics.[411] Dr. Bock, in his last budget request before the Window Rock hearing, suggested that future training funds might be better allocated by providing positions for the people who have already been trained:

> All of these programs train Indian people in health professions, but if positions are not going to be available to hire these people upon completion of training, then other steps should be taken to assure them of positions or decrease the volume of people being trained . . . In addition, the Navajo [tribal] Health Authority with its $5,000,000, 5-year grant to train Indian people in health careers, will promote additional pressure on IHS to supply jobs . . . . Can we then use the funds for training programs to provide additional positions, and allow the Navajo Health Authority and other agencies to provide the training? 412

In the Navajo Area alone, Dr. Bock estimated, funds in excess of $200,000 could be transfered to the operating program from training programs.[413]

## Beds, Space, and Equipment

Because of the shortage of nursing positions allocated by the IHS budget, the Shiprock Hospital found it necessary to close down 12 adult beds to reduce the nurse-patient ratio. While the reduction meant better care for hospital patients, it also meant that fewer Navajo patients could get care. Since the hospital practices what is called "acute care medicine," removing the 12 beds, as Dr. McKenzie put it, meant the IHS had "removed effectively the ability to take care of 12 more acutely ill patients."[414]

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[411] *FY 1974 Budget Request*, p. 5.

[412] *Ibid.*

[413] *Ibid.*

At the Gallup Indian Medical Center, where a higher level of expertise in certain medical fields is available, 26 beds had to be closed down because of inadequate supportive staff for safe care. At the Ft. Defiance Hospital, 34 beds were closed for the same reason, while the Winslow Hospital was forced to give up 10.[415]

Eliminating the beds obviously had not eliminated the need or the demand for hospital care. At the 75-bed Shiprock facility, there have been as many as 10 to 12 patients lying in the hall, either in beds or on stretchers.[416]

When beds are closed down, patients who would ordinarily be treated in an IHS hospital are sent elsewhere, for care paid for at greater cost out of the IHS contract medical care authorization.[417] As Dr. Bock explained the situation:

> If we had supporting staff with the bed capacity we now have, we could be providing care in our own facilities which we are now obligated to go out and buy. And we buy that at two to three times what it costs us in our facilities to provide it. 418

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414. Testimony of Dr. McKenzie, pp. 192-93.

415. Testimony of Dr. Bock, pp. 195-96.

416. Testimony of Gerald Conley, Administrator, Shiprock IHS Hospital, p. 195.

417. The IHS has a limited budget for medical services which for one reason or another it cannot directly provide. 42 U.S.C. 20001(b) (Supp. 1973).

418. Testimony of Dr. Bock, p. 196.

Even where there is a demonstrated, pressing need, the Area Director may not use contract medical care money to fund staff positions.[419] Again, the inflexibility of the budget is restrictive.

Besides personnel shortages, the Navajo Area suffers from an acute shortage of laboratory and other technical equipment. Shiprock Hospital Administrator Gerald Conley described the shortages at that facility:

> For example, the National Radiological Society recommends [a maximum of] 5,000 procedures per technician per year. At Shiprock, we have one machine, X-ray machine, and two technicians doing 15,000 procedures a year, which is three times what the National Society recommends. 420

As a result, people who come to the hospital for X-rays "wait long hours; they become disgusted; they leave . . ." without being X-rayed. And this, Mr. Conley added, creates more problems.[421]

The Shiprock Hospital laboratory is short on space, staff, and equipment. Mr. Conley testified, for example:

> . . .we're authorized four laboratory technicians to perform some 123,000 procedures a year, which if you break that down per technician and by day, it's an astronomical number.
>
> . . . the National Laboratory Technologists Association recommends 850 to 1,000 procedures a month per technician. So here again, without adequate equipment and with the tremendous demand by the medical staff we are forced to send some 13,000 to 15,000 procedures out to contract laboratories because we don't have the equipment or the staff to do it, and neither do we have the room to perform these. 422

The laboratory is one area where quantity can easily take its toll on quality. The shortages, Mr. Conley told the Commission, are a very important factor:

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419. Ibid.

420. Testimony of Gerald Conley, p. 193.

421. Ibid., pp. 193-94.

422. Ibid., p. 194.

> . . . it does lower the quality because when you work a laboratory technician doing two or three thousand procedures a month, that person is more apt to make a mistake in a procedure than if we had adequate staff and equipment to lower the number of procedures down to the national recommended number, 850 to 1,000. 423

Because of the shortage of equipment and personnel, and the limits on both overtime and contract medical care funds, the Shiprock Hospital in FY 1973 had to restrict both the kinds and number of lab procedures staff physicians were permitted to order.[424] As a result, according to Dr. McKenzie:

> . . . the doctors felt that there were times when patients who required extremely necessary laboratory procedures, that with this restriction, that they were not able to conduct the proper kind of diagnostic workup that the patient required. 425

On the outpatient side, the shortages are equally serious and, to the patient, all the more apparent. The Shiprock Hospital Administrator testified that the facility is handling 60,000 outpatient visits per year, with only five examining rooms. As Mr. Conley summed it up:

> We need more examining rooms. We need more room for X-ray. We need additional room for educational purposes . . . . We need additional waiting room area. 426

## Census Errors: Part of the Problem

Justification for more Navajo Area clinics, hospital space, staff, etc., must be based on population figures; and on this subject there is a major conflict between the U.S. Bureau of the Census and independent census takers.

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423. Ibid.

424. Testimony of Dr. McKenzie, p. 195.

425. Ibid.

426. Testimony of Gerald Conley, p. 194.

Mr. Conley testified that in 1970 the Census Bureau issued a population figure of 22,000 for the Shiprock Service Unit.[427] The tribal government challenged this figure, as well as the total Census figures for on- and off-reservation Navajos.

In the Shiprock area, three separate counts found 6,000 to 10,000 more Navajos than the Census Bureau.[428] Census Bureau figures are one part of the data that IHS headquarters uses to determine the size of a facility; this deficiency in the Census figures, Mr. Conley testified, is one reason why the Shiprock Hospital is not large enough for the region's needs.[429]

HEW is not the only Federal agency using Census data as guidelines for allocations. Because of the Census undercount, the tribe must continually justify its fair allocation of everything from dental chairs to revenue sharing funds.[430]

## The Context of Navajo Health

Health care on the Navajo Reservation is not an isolated problem that might be solved on a solely medical plane. The problem of Indian health, as the Area's Medical Director pointed out, exists in the total context of an impoverished, underdeveloped society:

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[427] Ibid., p. 209.

[428] Testimony of Gerald Conley, p. 209.

[429] Ibid.

[430] See generally, Transcript, pp. 209-10. The tribe successfully challenged, for example, the 1970 population figure (89,086) that was used to determine the revenue sharing allocations for the Navajo Tribe for entitlement periods 1-3, 4, and 5. With the assistance of the BIA, the Office of Revenue Sharing determined that the approximate April 1, 1970, population was 119,070. Letter from Arthur L. Hansen, Office of Revenue Sharing, to the Navajo Tribal Council Chairman, Feb. 26, 1975.

> There's no doubt that the economic level of a country or a nation, like the Navajo Nation, is directly related to the health of that nation, and that when we . . . give [a mother] good instructions as to how to feed her child and how to prepare formula and how to store the formula, when that mother goes home to a hogan where there is no electricity, no refrigeration, no running water and a possible contaminated water supply, it makes it very difficult because of the economic overtones to have the effect you could have with the health delivery system. So until the economic improvement takes place, the impact of the health system is going to be impaired. 431

Poverty on the vast Navajo Reservation means a land where diphtheria, a disease preventable by innoculation, is still endemic.[432] It means the need to refer people to clinics 70 or more miles from their homes, difficulty in arranging transportation, a lack of qualified followup, and long waiting times for appointments.[433] It means children with severe nutritional deficiencies causing marasmus and kwashiorkor--[434] diseases common in developing nations of the world but shameful and unnecessary in the midst of a land of affluence and industry. And this, as Dr. Bock concluded, should not be.[435]

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431. Testimony of Dr. Bock, p. 208.

432. FY 1974 Budget Request, p. 100.

433. Ibid., pp. 113-14.

434. Testimony of Dr. Bock, p. 208.

435. Ibid.

# TABLE 4

## HEALTH AND MEDICAL CARE INDICATORS:
## NAVAJO AND U.S. — 1970

| | Navajo | U.S. |
|---|---|---|
| Infant death rate, per 1000 live births | 42.3 | 20.7 |
| Incidence of certain infectious diseases, per 100,000 population | | |
| Tuberculosis | 270 | 19 |
| Rheumatic fever | 90 | 1.6 |
| Hepatitis | 1,120 | 223 |
| Life expectancy at birth (years) | 63.2 | 70.5 |
| Hospital beds per 1,000 population | 4.4 | 7.8 |
| Physicians per 100,000 population | 92 | 163 |

SOURCE: Navajo Area Office, U.S. Public Health Service.

Reprinted from Navajo Ten Year Plan, Exhibit No. 4, p. 517.

# 6. SUMMARY AND CONCLUSIONS

Despite a 5-year-old Federal policy of Indian self-determination, the country's largest Indian tribe, after more than a century of "trustee" domination, remains today as subject as ever to the redtape and shortsightedness of a still burgeoning Federal bureaucracy; the tribe is still the poorest of America's poor, and still has the worst health and least education of any ethnic group in the Nation. During more than a year of studying these problems, including a 3-day open hearing in the Navajo capital at Window Rock, Arizona, the Commission found not only a shocking and disgraceful condition of neglect, but an alarming acceptance of the status quo emanating from key Federal programs that should be providing the means for Navajo self-development. The summary below, and the recommendations that follow, pinpoint some of the major areas in which prompt action by the executive and legislative branches of Government can help the tribe to achieve a level of economic development commensurate with its potential and with the standard of living of the surrounding Southwest region.

## Legal Status

Federal law gives the Secretary of the Interior and the Commissioner of Indian Affairs broad powers over all Indian affairs and all matters arising out of Indian relations. This includes veto power over all tribal contracts. With the exception of hospitals and health-related programs, which are operated by the Indian Health Service, all Navajo development proposals must be directed to the BIA. Although the tribe has an elected council, set up under nontraditional, Anglo guidelines, virtually every significant action of this council must receive BIA approval before it can become law or be acted upon by the tribe. That approval process is often unnecessarily protracted and even obstructionist. The creation of an

Office of Navajo Labor Relations, for example, an effort to deal with the reservation's staggering unemployment, was approved by the tribal council in early 1972; the BIA did not sanction it until more than 1 year later. Testimony indicated that such delays are the rule rather than the exception, and the time lag has an adverse impact on progress as well as morale.

Because of the dual entitlement of reservation Indians, the Navajo are entitled to all the services and benefits accruing to American citizens by virtue of their citizenship, as well as the special entitlements flowing from treaty obligations and special laws enacted to benefit Indians. In spite of the dual entitlement principle, the tribe is often cut off from benefits and services available to other citizens because of an inconsistent Federal policy toward Indian tribes as equivalent units of local government. One example is the tribe's experience with the Federal Highway Administration (FHWA), which could be of assistance in bringing the reservation's ratio of paved roads to square miles up to par with surrounding areas. The tribe was refused FHWA assistance because the statutes creating that and other key agencies do not include tribal governments among the types of local governments with which those agencies can do business. The tribal government, therefore, while it functions like a local government in providing necessary services to its constituents, does not have access to Federal agencies funding specific programs. An even clearer example of the nonrecognition of the tribal government is the imposition of Federal excise tax on automobiles purchased by the tribal police. State and county governments are not burdened with this tax.

Expert testimony at the hearing supported the conclusion that there can be no significant economic development for the Navajo Nation until the political questions surrounding the tribe's legal status are resolved.

## Economic Development

The problem with economic development is that the tribe is almost starting from scratch. Per capita income on the reservation is about $900, or one-fourth the total U.S. figure. Development thus far has operated primarily in a neocolonial context, with outside developers primarily interested in mineral exploitation. The reservation has valuable energy resources in oil, natural gas, coal, and uranium. Strip mining is now conducted under leases that failed to mention the method of coal extraction or to guarantee adequate restoration of the land to natural contours. The tribe is concerned about the fairness of future mineral exploitation leases, in view of the relatively small size of its reserves. There is considerable distrust of large companies seeking to do business on the reservation, based in large part on the past failures of such companies to provide employment and other benefits to the tribe. Testimony referred to one incident in which a gas company allegedly represented that 900 Navajos would be employed at each of three proposed gasification plants, whereas the plants actually would employ a total of 900 employees each, which is not to say that any particular number would be Navajos. Other statements were allegedly made to the effect that water to be diverted from the San Juan River for plant use would also be available to the local community for noncommercial farm and household uses, when actually the company had not secured the water rights and had not planned to provide for noncommercial use. Responsibility for ascertaining what rights and benefits are being guaranteed to the tribe under such a contract should lie with the BIA, which should make a complete and comprehensive report to the local chapter house before it is asked to vote its approval.

Members of the tribe believe that 50-50 partnership arrangements with major firms for development of oil and gas reserves on the reservation might help to avoid some of the abuses of outside exploitation. But they believe that lobbying efforts within the Department of the Interior defeated at least one such effort in the past and may endanger future partnership proposals.

Besides its shortage of technical and managerial expertise, the reservation is lacking in other development factors that would help the tribe to take greater control over industrial development. Among these deficiencies are extremely poor transportation facilities (shortage of paved roads, no major rail shipping depot, air transport limited to small charter services), a lack of skilled labor, an incomplete irrigation system, and, most crippling of all, an extreme scarcity of investment capital.

Because the tribe does not control the institutions for development on the reservation, capital that could be generated is instead drained off; there is an absence, that is, of any multiplier effect. According to expert testimony, there has been no significant effort in the history of Federal Indian affairs policy to plan and provide systematically the necessary capitalization for both resource and human development meshed with the tribe's own resources (mostly from land leases and mineral royalties). The Federal Government has chosen to run a relief economy rather than a development economy.

Navajos have difficulty obtaining credit for business development. Since tribal lands are held in trust by the Federal Government, the land a Navajo lives on cannot be used as collateral for a private bank loan. Neither will the banks recognize personal property as collateral. The special institutions that exist to help fill such credit and investment capital gaps--the Small Business Administration, the Economic Development Administration, and the Navajo Revolving Credit Fund, for example--have only a fraction of the capital needed and in some instances are not structured to render required services. SBA regulations and policies are not adapted to serving Indian applicants, and the minority enterprise program apparently was not planned to include Indians. SBA's community development program has also failed to relate to Navajo needs; the program caters only to profit-oriented business, while tribal culture encourages nonprofit cooperatives. Only one group of Navajos has met all of the program's requirements. Their application was for a $350,000 loan to start a commercial laundry facility in Tuba City, in the western part of the reservation. SBA, however, wanted a guarantee from the BIA that this laundry would get a BIA contract for 3 years, something BIA said it was unable to give. SBA claims it did everything it could to try to get the business started but received little cooperation from the BIA. BIA counters that it lacks authority to guarantee any contract for 3 years, adding, without any apparent evidence, that to have done so anyway would have put another Indian laundry, some 200 miles away, out of business. The Commission found no logical reason why these two agencies could not have worked out some common ground of agreement on which this project might have been funded.

Another obstacle to new business starts is the involved procedure for obtaining a lease on the reservation. The process includes some 20 steps that may take from 1 to 5 years to complete.

## Employment

The Navajo Tribe has made a major effort in the last 3 years to reduce its unemployment rate from the 65 percent figure of 1971. (In 1974, reservation unemployment was 40 percent.) That effort, for the most part, has been without BIA assistance and sometimes against its opposition. BIA contracts may not even contain the words "Indian preference" but may speak instead of "local preference," a term under which employers have enjoyed broad leeway, despite BIA assurances that the "intent" of the clause is for Indian preference and is explained as such to contractors. While other aspects of these contracts are monitored and enforced, the BIA makes no valid effort to monitor or enforce the employment provisions. BIA officials testified that a shortage of staff forced them to rely on the tribe to discover and report contract violations. Yet, the Bureau delayed more than a year in approving an Office of Navajo Labor Relations that, among other things, would monitor employment complaints.

The chief BIA contracting officer for the Navajo area was not sure how Indian employment data reached his office, or whether the office even had such a reporting system. Despite the standard equal employment opportunity clause in BIA contracts for services and supplies, the contracting office has never required breakdowns on Indian employment from suppliers, has never made a formal check on their employment practices, and has never cancelled or threatened to cancel a contract for noncompliance with the EEO clause. The BIA has never issued any specific guidelines for conducting onsite observations, nor has it ever held a conference of EEO officers to share experiences or formulate guidelines.

Tribal efforts to get stronger Navajo preference provisions inserted in approximately 100 contracts and leases with large employers on and near the reservation have ranged from persuasive bargaining to at least one major EEOC complaint. The tribe finds the alternative of going to court with contractors who violate the preference clause impractical for financial reasons. The corporations doing business on the reservation include some of the richest in the country, with resources adequate for the longest litigation. Since the BIA must approve all of the tribe's contracts and leases, it would seem to bear some responsibility for securing enforcement. But no contractor has been sued by the Government for violation of a contract's employment provisions.

Overall, the Commission found the BIA's response to the Navajo unemployment problem has ranged from obstructionist to, at best, insufficient to change the status quo. Where the BIA should be exercising a leadership role, as in the wording of its own contracts with private employers, the Commission found it instead in last place, with the weakest employment provisions of all. Where the

BIA should be demonstrating that the full authority of the Federal Government stands behind enforcement of the Navajo preference clause in tribal contracts, instead it closes its eyes to even the possibility of violations. The BIA, in short, has created and maintains an elaborate machinery that intrudes on almost every aspect of Navajo life but is incompetent--or unwilling--to enforce Navajo rights.

## Education

Most Navajo children attend schools on or near the Navajo Reservation. In the past few years more students have been staying in school longer, but the proportion graduating from high school remains well below that for other groups.

Education on the Navajo Reservation is provided through multiple delivery systems: the three separate public school systems of Arizona, New Mexico, and Utah; BIA-operated schools; and some private schools. The Commission found no evidence that these systems have made any attempt to coordinate their educational efforts. Such lack of coordination negatively affects Navajo education from beginning to end: There are no uniform standards for teacher certification; salaries are disparate; no uniform curriculum has been developed; and no single authority is responsible for monitoring the millions of dollars in Federal aid spent for the education of Indian students on the Navajo Reservation.

Regardless of the school system they are in, Navajo students find themselves in an environment controlled and dominated by non-Indians. Most of the teachers and administrators in reservation schools are Anglo. Public school boards of education are dominated by non-Indians and those few Indians who do serve wield little authority. Parent advisory boards are the BIA school equivalent of a board of education; while these are all Indian, their function is only advisory and they are essentially powerless.

Navajos, in fact, have been excluded from the decisionmaking process in these school systems. The result has been a variety of educational policies unrelated to the Navajo community. The Navajo language and culture have been largely ignored in the curriculum offered to Navajo students. Although an occasional course in the Navajo language is offered, there is little push to develop bilingual education and some schools still reprimand students and teachers for speaking Navajo. Nor has bicultural education had much support from non-Indian educational planners on the reservation. Insensitivity to Navajo culture is revealed dramatically in the preservation by many schools of a dress code requiring male students to keep their hair short, effectively preventing them from wearing the traditional "Navajo knot."

Navajos have little opportunity to receive teacher training on the reservation. The lack of Navajo teachers in reservation schools was cited frequently as a primary reason for the Navajo student's passive interest in school. While it is clear that more Navajo and Indian teachers need to be recruited, clearer still is the need for revised certification requirements for teachers in such subjects as Navajo history and culture, traditional crafts, and the Navajo language, areas of learning that bear little relation to academic degrees.

Transportation on the reservation is bad; the population is widely scattered and the roads are both few and poor. Students travel many miles by bus or are boarded at BIA schools. A few community-controlled schools have been started and may provide an answer to both distance and boarding schools. Television as a vehicle for more localized education is in the developmental stages. Adult education programs have so far been limited in size and in scope. Imagination and innovative technology are needed to solve some of the unique educational problems presented by the Navajo Reservation.

Two basic findings relate to all of the Commission's specific recommendations for improvement in Navajo education:

1. The language, history, and culture of Navajos are not

incorporated as integral parts of the educational process.

2. Navajos are not fully represented in decisionmaking positions that determine and influence educational policies and practices.

Health Care

Health care on the reservation is not only inadequate, it is unsafe. Patients are left unattended; doctors are limited in the kinds and numbers of diagnostic tests they can request; laboratories are cramped, unequipped, understaffed, and overworked--and mistakes, serious mistakes, are common. All six IHS hospitals in the Navajo area are critically understaffed. While the average national ratio of hospital staff to patients is 2.8 to 1, the IHS hospitals is 1.6 staff members to each patient. These staff shortages have been the documented cause of needless loss of life in several instances. For high risk or premature babies, the recommended nurse to patient ratio is 1 to 1, but in a typical IHS Navajo hospital that ratio has been as lopsided as one nurse to 18 babies, 8 of them premature. At Shiprock IHS Hospital, where newborns are frequently left unattended, three infants are known to have died as a result of inadequate monitoring. Because of budget limitations, the hospitals have had no choice but to close down beds to avoid more such incidents. But, even before the beds were closed, the hospitals were already too small to meet the needs of the reservation population, badly undercounted in the census on which the IHS relies for its need estimates.

The Area Medical Director is not free to make necessary adjustments in a too tight budget. The Director can only suggest (and in the past has done so as often as six times a year) that some of the money used to train people for nonexistent staff positions might more practically be used to provide positions for people already trained, and that some of the money for expensive, outside contract medical care might be better used providing nurses and aides to attend available beds, so they will not have to be closed down in order to avoid "accidents" such as a healthy baby choking to death while unattended.

The injustice committed on the Navajo people by the Department of Health, Education, and Welfare, the IHS parent agency, is one of both nonfeasance and misfeasance--of not doing what is necessary and of doing inadequately what it does at all. As a result, the IHS has failed to measure up to its own professed goal: "to provide. . .the highest quality health services possible within available resources" because substantial portions of those resources have been wasted through inefficiency and misadministration at the highest level. The Office of Management and Budget, by impounding congressionally-appropriated funds for reservation health care, has shown a callous disregard for the dire needs of the poorest of America's poor. Finally, it must be recognized that health problems of the Navajo Reservation cannot be solved on a solely medical plane. Health care, nutrition, and sanitation are an integral part of economic development and must be improved simultaneously and in conjunction with improvement of the education and livelihood of the Navajo people.

# 7. RECOMMENDATIONS

## I. ACTION NEEDED TO IMPROVE THE LEGAL STATUS OF THE NAVAJO TRIBE:

1. Congress should enact legislation recognizing the Navajo Tribal Council as a governing body for the purpose of Federal tax classification under the Internal Revenue Code, as well as to qualify the tribe for grants and loans available directly from Federal agencies that are currently restricted by the wording of their enabling statutes from dealing with tribal governments on Indian reservations.

Although the Navajo tribal government maintains an elected council and provides necessary services for the reservation population, significant Federal laws, including the Internal Revenue Code, fail to give it the same rights and privileges as State and county governments. The tribe's purchase of police cars, for example, is not exempt from the Federal excise tax. The Federal Highway Administration is not empowered under its enabling legislation to transact business with the tribal council. FHWA can only do business with State and county governments. Instead of the lengthy and duplicative process of amending each relevant statute, one piece of appropriate legislation could remedy this problem.

2. The process by which virtually every significant proposal approved by the Navajo Tribal Council must be further approved by the BIA should be amended and streamlined into a system similar to the presidential veto, with fewer categories of resolutions requiring BIA approval, and with a provision for automatic approval when the Bureau fails to act on a proposal within a specified period of time.

## II. ACTION NEEDED TO HASTEN ECONOMIC DEVELOPMENT ON THE NAVAJO RESERVATION:

1. Congress should enact legislation creating a program of development aid sufficient to support essential services to the reservation population until such time as tribal revenues are adequate to maintain both an infrastructure and reasonable development investment.

Revenues currently received by the tribe from oil leases and royalties are largely absorbed by administrative costs--the day to day expenses of running a government and meeting basic welfare needs on the reservation. Less than 4 percent of the tribe's budget revenue of $16.9 million is investment capital. Expert testimony pointed out the need for Federal subsidization of administrative costs to allow the tribe to use its own revenue for investment development.

2. A Federal program should be established under which the tribe would have access to the best technical expertise available within any branch or agency of the Federal Government for assistance in planning and decisionmaking aspects of development. This program might take the form of paid leaves of absence or special projects of up to 1 year, during which experts in fields designated by the tribal council would conduct studies and make reports for the council on matters related to economic development.

Testimony at the Window Rock hearing revealed that the tribe has not had adequate, impartial technical advice in negotiating contracts with outside corporations. The burden of ascertaining what benefits local residents would receive from projects such as gasification plants proposed for their areas has fallen on individual members of those communities who might have the time and resources for investigating the proposals. Neither has the tribal council had access to the type of development expertise that could contribute to long range planning toward the time when mineral resources on the reservation are likely to be depleted. The Commission considers it imperative that long range planning assistance be provided and that the tribe have unbiased answers to such questions as the adequacy of royalties, the extent and methods of mineral extraction, and the extent of environmental alteration involved in a proposed project before being called upon to give its approval.

3. Congress, in view of its 1962 commitment to fund the Navajo Irrigation Project, should with the assistance of the tribe establish a reasonable timetable for fulfillment of that commitment.

Nearly one-third of all Navajo families spend some time in stock raising and working small farms, but, with only a few exceptions, these agricultural incomes provide only bare subsistence. More than half (55 percent) of the 25,000 square miles of Navajo land area is classified as desert that supports scattered herds of livestock. Nearly two-fifths (37 percent) is steppe, a semi-arid land also used for grazing, and about 8 percent is forest and mountain country used for lumber production and with attractive potential for recreational use. Because of the lack of dams, canals, and irrigation systems, the tribe has never been able to make full use of its rights to water on and bordering on the reservation. Congress authorized the Navajo Irrigation Project in 1962, but funding has been grossly inadequate. The tribe has estimated that, to complete the project by 1986, $150 million in funding is needed through 1982. Its completion would bring 110,000 acres into irrigated agricultural production.

4. The Federal Government, through the Federal Highway Administration, should cooperate with the tribal council in formulating timetables for providing paved roads commensurate with the reservation's economic and social needs.

Although the reservation has both natural and human resources, many other elements are lacking that affect its attractiveness to investment capital. A manufacturer's access to markets, for example, is an important consideration in plant location. Transportation facilities on the reservation are severely limited. Roads generally have been built only to link the various government facilities--schools hospitals, and offices. Only 1,370 miles of roads are paved. This is little more than one-third of the ratio of paved roads to square miles in the rural areas of the States surrounding the Navajo Reservation. Other modes of transportation are even more limited.

5. The Department of the Interior should adopt a policy in favor of joint enterprises--on a 50-50 basis--between the tribe and corporations wishing to conduct business on the reservation.

The tribe attempted in the 1950's to develop its uranium resources along partnership lines with a major corporation, but the project was never approved by the Department of the Interior. There is concern among the tribe that in competitive fields, such as the oil and gas industries, considerable lobbying goes on in the Department to discourage joint ventures with the tribe. Nevertheless, the tribal council is still pursuing this course in hopes of securing a more equitable share of profits, a larger percentage of the labor force, more job training, and more desirable utilization of resources.

6. (a) The Small Business Administration should establish an Indian desk and the Equal Opportunity Loan Program should be reconstructed to deal with credit problems peculiar to reservation Indians.

The Small Business Administration's loan programs are ill-suited to serve the Navajo Nation. One SBA program that has completely failed the tribe is the community development program, which is limited to profit-oriented businesses, while the culture of the Navajo is more supportive of nonprofit, cooperative ventures. That program should be amended to allow participation by self-sustaining, nonprofit Navajo businesses.

(b) The Bureau of Indian Affairs should establish a coordinating committee to formulate and coordinate programs and policies among agencies doing business with the Navajo Tribe, including the SBA and any other Federal agency that is now or may in the future be empowered to deal directly with the tribe.

The need for such a coordinating body is demonstrated by the situation that developed when one group of Navajos succeeded in meeting all the requirements for a local development company loan under the community development program of SBA. SBA conditioned the loan on the BIA's agreement to enter a 3-year contract with the proposed Navajo business. The BIA refused and the loan was rejected. The Commission found both agencies at fault and recommends that such problems be dealt with in the future by a body set up to find ways of overcoming interagency barriers and of fully utilizing all Government programs that might contribute to economic development.

7. The Navajo Revolving Credit Fund should be augmented by an adequate Federal subsidy and its programs routinely advertised across the reservation.

The Navajo Revolving Credit Fund was established in the late 1940's with tribal funds and an initial loan of $700,000 from the BIA's Revolving Credit Fund. As of June 30, 1973, BIA participation had been reduced to $250,000 and the tribe's investment had grown to nearly $2 million. Retained earnings in the program amounted to $429,906, making a total investment of $2,668,257. The major problem with the tribal credit program is simply that it lacks sufficient funds to support significant small business development.

### III. ACTION NEEDED TO INCREASE EMPLOYMENT AMONG THE NAVAJOS:

1. The Bureau of Indian Affairs should issue an unequivocal statement of its intent to enforce up to 100 percent Navajo preference in employment by Federal contractors on and near the reservation, in accordance with the opinion issued by the Department of Labor Solicitor's Office.

(a) Guidelines should be developed and published for the attainment of Navajo preference and for the training and upgrading of Navajo employees under Federal contracts.

(b) A revised and more precisely worded clause delineating these Navajo preference requirements should be included in all future Government contracts.

(c) The BIA should also establish a reliable monitoring system and hire an adequate Navajo enforcement staff to ensure compliance with the Navajo preference clause and the guidelines for training and upgrading.

The Department of Labor Solicitor's Office in August 1973 issued its opinion that, under Title VII of the Civil Rights Act of 1964, the preference for Indian employment is an absolute one that may work to the total exclusion of all non-Indian employees, trainees, etc. The BIA has never concurred with this interpretation. BIA contracts covering construction and procurement include a clause calling for preference for "local residents." According to Navajo Area BIA officials, BIA contracting officers have no authority to require that, whenever possible, local employees hired under the clause must be Indian. The Navajo Area BIA office responsible for $60 million in Federal contracts in the year preceding the Window Rock hearing had never required breakdowns on Indian employment from contractors, had never made a formal check on employment practices, and had never cancelled or even threatened to cancel a contract for noncompliance with its employment provisions. The excuse offered for this neglect was lack of staff and lack of time. Where it was claimed that onsite observation was done by BIA officials, it was also admitted that the method used was simply "personal observation" without any guidelines or system for reporting findings.

2. The Secretary of the Interior should put the full strength of that office behind tribal efforts to renegotiate inadequate preferential employment provisions of existing leases and contracts between the tribe and outside enterprises to reflect the Department of Labor opinion as to full compliance under Title VII of the Civil Rights Act of 1964.

The Office of Navajo Labor Relations has drawn up a new and more precisely worded preference clause, as well as guidelines for training and upgrading of Navajo employees. These guidelines have been approved by the Solicitor's Office of the Department of Labor as being in accord with Title VII and are now included along with the preference provisions in new contracts and leases of the tribe.

About 100 leases are already outstanding, however, that contain the original Navajo preference clause, to which many employers have given no more than a literal interpretation. Some of these leases are for 50 to 90 years. Since the tribe lacks the resources for forcing compliance with the intent of the original clause through litigation, the Office of Navajo Labor Relations has been seeking to renegotiate these contract provisions with willing employers. In one situation, in which an investigation was conducted by the Equal Employment Opportunity Commission, an employer agreed to renegotiation after being requested to do so "in a very forceful manner" by the Secretary of the Interior. The Commission believes the Secretary should take the initiative in this matter and urge renegotiation of the preference clause in all existing contracts and leases on the reservation.

3. National unions involved in hiring on projects located on or near the reservation should be affirmatively encouraged by the Department of the Interior to make every effort to facilitate implementation of the Navajo preference requirement.

Hiring for several major construction projects on the reservation has been done, in accordance with union contracts, at hiring halls off the reservation, and sometimes at great distances from the project sites. While an agreement has been worked out whereby Navajos can keep in contact with hiring halls in Phoenix and Flagstaff, Arizona, by mail, there are still problems caused by distance and the lack of transportation. The Department of the Interior should fully support the efforts of the Office of Navajo Labor Relations to alleviate these problems. Unless the unions make their hiring hall procedures more convenient for the reservation Indians, Navajos will continue to be hampered in realizing their full rights under the Navajo preference requirement.

4. The Navajo Tribe should create and the EEOC should fund a tribal agency that would have jurisdiction over complaints of employment discrimination on the reservation. This agency should be granted authority substantially equivalent to that which EEOC generally requires of a municipal agency in order for EEOC to defer complaints to the agency.

Employment discrimination is clearly a problem on the reservation. One way such problems have traditionally been handled elsewhere is by local human relations commissions or other agencies of that nature with power to investigate, conciliate, and provide sanctions. EEOC has the authority to promote and fund such agencies. The tribe itself does not have sufficient funds to establish and staff such an agency.

## IV. ACTION NEEDED TO IMPROVE NAVAJO EDUCATION:

### Administration

1. Congress should designate the Navajo Tribe as a Tribal Education Agency.

Fifty-two thousand students, almost all of them Navajo, attend school on the reservation. Yet the Commission found a consistent lack of Navajo participation in the educational process--few Navajo teachers, fewer Navajo administrators, and no tribal role in coordination of the various systems that deliver education to the Navajo Reservation.

Designation as a Tribal Education Agency (TEA) will allow the tribe to represent its constituency from a position of authority commensurate with that of State education agencies. Such designation is particularly important to the tribe in its dealings with State education agencies, and in its relationship to the Federal Government. As a TEA, the tribe will be able to coordinate expenditure and monitoring of Federal monies such as Johnson-O'Malley and Title I funds for the reservation as a whole, thus avoiding the present separatist process of treating those parts of the States falling within the reservation's boundaries as three unrelated units--and the BIA system as a fourth unit.

The TEA could be instrumental in establishing uniform standards for teacher certification and curriculum content for all schools on the reservation. A more long range goal, already being studied by the Navajo Tribal Division of Education, is the unification of the BIA school network with the three State public school systems. The TEA would be responsible for carrying forward this unification effort.

Most important, the TEA would, for the first time, provide the Navajo people with a specific structure for affecting the educational programs of all schools on the reservation. The proposed agency would be able to work with its counterparts in surrounding States to consider more carefully the concerns of Navajo children whenever policies are established for the common good of all students in those States.

2. HEW and the BIA must coordinate the expenditure and monitoring of those funds under their supervision that are used to aid Indian education.

Four Federal funding sources currently provide aid for the education of Indian children: P.L. 874 funds, allocated on a per student basis, in lieu of taxes; Johnson-O'Malley funds allocated per Indian student, nominally to meet special Indian education needs; Title I monies, granted per student on the basis of economic and educational deprivation; and Title IV funds, granted per Indian child to meet the special educational needs of Indian children.

The funding process for each of these allocations is independent of all the others; there is no cross-referencing of amount, purpose, or accomplishment for these expenditures. The responsibility for coordinating these aid programs lies with the supervising agency. Guidelines promulgated by these agencies should detail a procedure that will guarantee that these funds not be duplicative and that they be spent for their intended purposes.

The recently passed Indian Education Assistance Act directs the Secretary of the Interior to prepare for Congress, in consultation with the Secretary of the Department of Health, Education, and Welfare, an analysis of JOM programming as it dovetails with other Indian education funding. Title I and Title IV are included in the list set out in the act for analysis; 874 funds are not mentioned. Such an analysis is a first step in the coordination process, but it should be comprehensive, taking into account all of the programs that provide assistance to Indian education, and should lead to a continuing program of inter-agency cooperation in this area. This will require both preplanning and much more monitoring than has so far been evident in connection with these programs.

Designation of the tribe as a Tribal Education Agency, as described above, would help to coordinate funding goals, but the process of coordinating all phases of the funding and program process must start at the Federal agency level and must include Navajos as planners, administrators, and monitors of all programs involving aid to Indian education.

3. Navajos must be fully represented in the decisionmaking positions that determine and influence educational policies and practices affecting Navajo children.

This recommendation is addressed to the Bureau of Indian Affairs, State boards of education, local boards of education, and those Federal agencies responsible for funding programs that require locally selected advisory boards.

In this Commission's Southwest Indian Report, released in May 1973, it was recommended that the BIA amend its Johnson-O'Malley regulations to provide that representatives of the Indian community control the use of JOM funds. Since that time, amended regulations have been issued by the BIA (39 Fed. Reg. 1776, January 14, 1974) and thereafter revised (39 Fed. Reg. 30114, August 21, 1974). The revised regulations reflect a commitment to increased parental participation and control in the development of supplemental education programs for Indian children. It will now be the responsibility of the BIA to ensure that such increased parental participation occurs in a meaningful way.

For the most part, however, Navajos continue to be underrepresented at all levels of decisionmaking that directly affect the education which Navajo children do and will receive. While some Navajos may be elected or appointed to local boards of education, they continue to be outnumbered and outvoted by their non-Indian counterparts. There is also a logistical problem of cost and availability of travel to and from school and advisory board meetings; Indian parents and community members are not always aware that transportation money is available under some of the Federal aid to education programs.

It was amply documented at the Window Rock hearing that few Navajos have the incentive to participate as school board or advisory committee members when their opinions and suggestions are so often discounted.

This situation has led to an absence of Navajos among the ranks of those elected to State and local boards of education.

Although the tribal council has recently voted to give the BIA advisory school boards some authority over BIA school personnel, the BIA, itself, has been slow in initiating increased Navajo involvement in BIA education decisions. There are few Navajos in administrative positions in BIA schools; nor are there many Navajos in the professional ranks of the BIA Navajo Area Division of Education.

### Curriculum

1. State departments of education in Arizona, New Mexico, and Utah should establish requirements aimed at assuring that the individual interests, language, and skills of Navajo children are given adequate consideration in the curriculum and instructional materials used by local school districts. These requirements should include the following points.

(a) Curriculum and instructional materials must incorporate the history, language, and culture of Navajos.

(b) Restrictions on the use or speaking of the Navajo language in the classroom or on school grounds must be eliminated.

(c) Mechanisms must be established to facilitate participation of Navajo pupils, parents, and community members in development of curriculum and instructional materials.

(d) School districts with substantial numbers of Navajo-speaking parents must provide for translation of school board and advisory committee meetings so as to facilitate full participation of all parents in discussions and decisions.

(e) Schools and school districts with substantial numbers of children of Navajo-speaking parents must devise some workable method of, or substitute for, sending written notices home to those parents.

(f) School districts must establish numerical goals and timetables for securing equitable Navajo representation in staff positions involving the selection and implementation of curriculum.

(g) Textbooks must present accurate and unbiased portrayals of American Indians.

2. State departments of education should establish numerical goals and timetables for securing equitable representation of Navajos (a) in staff positions involving the selection and development of curriculum and (b) on State textbook committees.

3. State legislatures should enact legislation requiring districts to establish bilingual education or other curricular approaches designed to teach English language skills to non-English-speaking students while incorporating into the curriculum the student's native language, culture, and history. Federal agencies should condition Indian education grants on the provision of such programs.

### Teachers

1. Steps must be taken by the Federal and State governments and by teacher education institutions working with the Navajo Tribe to eliminate the shortage of Indian teachers in reservation schools.

(a) Teacher education institutions in the Southwest must actively recruit Indian trainees.

(b) Teacher training must be made available on the reservation and must have the flexibility to incorporate and build from the trainee's already acquired academic and life skills.

(c) Teacher certification requirements should be made uniform and should be expanded to cover those traditional areas of expertise not related to academic degree requirements.

2. Teacher education institutions in the Southwest should provide special training for those students who intend to teach in a Navajo community. This training should be oriented toward promoting:

(a) An understanding and appreciation of the history, language, and culture of Navajos.

(b) The ability to facilitate the fullest possible development of Navajo students' potential.

(c) Skills in interacting positively with Navajo students and adults.

3. *School districts on or adjacent to the Navajo Reservation should update teaching skills of their current instructional staff by providing in-service training that incorporates the factors specified in recommendation 2.*

4. *State departments of education should require those districts where the primary language of the students is not English to provide teachers who speak the students' language and understand their cultural background.*

### Alternative Delivery Systems

1. *The Bureau of Indian Affairs should continue to support the community-controlled schools presently in operation and should, with full prior consultation and agreement with Indian tribal government, assist other communities in designing their own locally-controlled school operations. In all cases the design and contracting of additional locally-controlled schools should be consistent with the overall educational plan(s) approved by tribal government.*

As pointed out earlier in this report, community-controlled schools are a recent development on the reservation and have not been in existence long enough for an assessment to be made of the academic achievement of their students. The response from Navajo parents and students, and from the staff in these schools, has been altogether positive. It is because of this response that the Commission feels that the concept should be encouraged. While community-controlled schools in their present formative stages may not be the absolute answer to Navajo educational needs, they are clearly one positive alternative to a variety of systems which have been demonstrably unsuccessful. However, plans for additional contracting of schools should be developed with the full participation of the Navajo Division of Education and should be consistent with the tribe's approved comprehensive education program.

2. *Federal funding should be provided for experimentation with the use of educational television on the reservation.*

Great distances and bad roads make the delivery of any kind of education a problem on the Navajo Reservation. The possibilities for using television as a teaching device in this context are limited only by funding and imagination.

3. Federal and State education agencies, working with the Navajo Tribe, should expand adult education opportunities on the reservation and ensure that provision of educational services for the adult population is made an integral part of reservationwide educational programming.

The Commission found that very little adult education is offered through the traditional educational channels on the reservation. Many Navajos would welcome the opportunity to continue their education and special consideration must be given to their needs.

## V. ACTION NEEDED TO IMPROVE NAVAJO HEALTH CARE:

1. Congress should appropriate sufficient funds for the Indian Health Service to bring the standard for Navajo health care up to par with that of the general U.S. population.

The figures on the poor status of Navajo health on the reservation demand the conclusion that the meager funds allotted the Navajo Area IHS are inadequate to meet the need or to satisfy the Federal commitment under statute and treaty to provide comprehensive medical care to reservation Indians. When Congress in fiscal year 1973 added $2.208 million to the IHS budget, an economy-minded administration impounded the funds.

2. (a) The Indian Health Service should increase allowable flexibility within its area budgets from 5 percent to 20 percent to allow for discrepancies between predicted and actual needs.

(b) IHS area directors should be permitted to use up to 20 percent of contract medical care funds for other budget items, such as staff positions in IHS facilities.

Epidemics and other unforeseen problems often cause great discrepancies between needs projected in the Navajo Area IHS budget requests and the needs that actually materialize. The Commission found that the current 5 percent allowable flexibility between some budget items is unrealistic. By the same token, it is inefficient to close down hospital beds for lack of funds to staff nursing positions, with the result that patients are channeled to more expensive, non-IHS facilities for treatment paid for out of contract medical care funds, a budget item currently lacking any flexibility at all. Laboratory tests and other services now contracted out because of insufficient staff and equipment similarly increase waste and inefficiency in the area budget. And that waste takes its toll in lives and general health among the Navajo people.

3. For the use of Federal agencies which rely on Bureau of the Census figures to determine population needs in a particular area of the reservation:

(a) Census data should be run from Census tapes for each enumeration district of the reservation.

(b) The BIA head count of school children should be broken out by school district.

(c) Based on the data from these two pieces of information, an extrapolated count for each area of the reservation should be developed.

Census undercounts on the reservation were well-documented in the Window Rock hearing. The tribe does not have sufficient funds to finance an independent census for each area of the reservation where a suspected discrepancy might result in a deficient Federal program or a hospital too small for local needs.